APPENDIX TO PETITONERS' BRIEF
LEGISLATIVE MATERIALS

Supreme Court of the United States

OCTOBER TERM, 1967

No. 800

WORLD AIRWAYS, INC., ET AL., *Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 946

CIVIL AERONAUTICS BOARD, *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 969

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

INDEX TO LEGISLATIVE MATERIAL

	Pages
Senate Bill, S. 1969	1b
House of Representatives Bill, H. R. 7318	7b
House of Representatives Bill, H. R. 7512	13b
House Report No. 1177	17b
Senate Report No. 688	91b
Conference Report, House Report No. 1950	173b
Hearings in the House of Representatives	207b
Hearings in the Senate	217b
Congressional Record:	
House of Representatives	229b
Senate	234b
Public Law 86-661	240b

LEGISLATIVE MATERIALS

Senate Bill, S. 1969

87th Congress, 1st Session

A BILL To amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and inserting therein two new paragraphs to read as follows:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

"(ii) If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—

"(A) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted

January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;

"(B) that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and

"(C) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h); *Provided,* That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue a certificate hereunder if it approves the transfer pursuant to section 401(h) of this Act;

the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supple-

mental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto for such period as the Board deems proper: *Provided,* That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended by adding the following text: "A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: *Provided,* That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d)."

SEC. 4. (a) Any air carrier entitled to certification under section 401(d)(3)(ii) of the Federal Aviation Act, as amended herein, may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to said section 401(d)(3)(ii) within said thirty days, until the Board

has acted upon such application. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had an application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority until the effective date of an order of the Board disposing of such application. Any carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order, insofar as such order would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 or against the holder of interim authority issued under section 1(1) of Public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or

interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier for violations occurring prior to the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under paragraph (3)(i) or (ii) of section 401(d) of the Federal Aviation Act as amended by this Act may be imposed upon a certificate issued to such air carrier under such paragraph.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of by the Board insofar as said application seeks authority to engage in interstate air transportation, (1) upon the effective date of a certificate of public convenience and necessity issued to such carrier pursuant to the provisions of section 401 (d)(3)(i) or (ii) of the Federal Aviation Act; (2) upon the effective date of an order of the Board denying any application of such carrier for a certificate of public convenience and necessity under section 401(d)(3)(i) or (ii); or (3) in the event such carrier was issued authority by order E-13436 or E-14196 or interim authority under Public Law 86-661 and fails to file application for a certificate pursuant to said section, on the thirty-first day after the date of enactment of this Act.

House of Representatives Bill, H. R. 7318
87th Congress, 1st Session

A BILL To amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and inserting therein two new paragraphs to read as follows:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier,

the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

"(ii) If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—

"(A) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim

operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;

"(B) that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and

"(C) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h): *Provided,* That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue a certificate hereunder if it approves the transfer pursuant to section 401(h) of this Act;

the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to

the terms, conditions, and limitations attached thereto for such period as the Board deems proper: *Provided*, That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended by adding the following text: "A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: *Provided*, That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d)."

SEC. 4. (a) Any air carrier entitled to certification under section 401(d)(3)(ii) of the Federal Aviation Act, as amended herein, may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to said section 401(d)(3)(ii) within said thirty days, until the Board has acted upon such application. Any air carrier whose application for certification as a supplemental air carrier is

pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had an application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority until the effective date of an order of the Board disposing of such application. Any carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order, insofar as such order would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 or against the holder of interim authority issued under section 1(1) of Public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air

carrier for violations occurring prior to the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under paragraph (3) (i) or (ii) of section 401(d) of the Federal Aviation Act as amended by this Act may be imposed upon a certificate issued to such air carrier under such paragraph.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of by the Board insofar as said application seeks authority to engage in interstate air transportation, (1) upon the effective date of a certificate of public convenience and necessity issued to such carrier pursuant to the provisions of section 401(d)(3) (i) or (ii) of the Federal Aviation Act; (2) upon the effective date of an order of the Board denying any application of such carrier for a certificate of public convenience and necessity under section 401(d)(3) (i) or (ii); or (3) in the event such carrier was issued authority by order E-13436 or E-14196 or interim authority under Public Law 86-661 and fails to file application for a certificate pursuant to said section, on the thirty-first day after the date of enactment of this Act.

House of Representatives Bill, H. R. 7512
87th Congress, 1st Session

A BILL To amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (32) and (33) as (34) and (35) respectively, and inserting therein two new paragraphs to read as follows:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which limits the holder to performance of (1) unlimited charter operations on a planeload basis for the carriage of passengers and property in interstate, oversea, and territorial air transportation, with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft, (2) individually ticketed passenger or individually waybilled cargo operations in the frequency of one hundred and ninety-two flights per year in the same direction between any single pair of points in any calendar year, in interstate, oversea, and territorial air transportation, and (3) supplemental air carriers shall have the right of first refusal in the operation of all charter trips in interstate, oversea, and foreign air transportation.

The Board shall implement this section by appropriate regulations."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a temporary or permanent certificate authorizing the whole or any part thereof if it finds that the applicant is fit, willing; and able properly to perform supplemental air transportation as defined herein, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder and if the Board finds after public hearing that such certificate is required by the public convenience and necessity.

"(ii) If any applicant who makes application for a certificate for supplemental air transportation within one hundred and twenty days after the date of enactment of this paragraph shall show (A) that, on such date it or its predecessor in interest, was an air carrier furnishing services between places within the United States authorized by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, to render such service, and that any portion of such service for any class of traffic was performed pursuant to such certificate during such period and (B) that, such certificate had not been revoked or otherwise terminated by the Board prior to the enactment of this paragraph, the Board, upon proof of such facts only, shall issue a cer-

posed by the court until the court shall lift such stay or until the final disposition of the judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 pending before the Board on the date of enactment thereof, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier of a certificate of public convenience and necessity for supplemental air transportation under paragraph (3)(ii) of section 401(d) of the Federal Aviation Act as amended by this Act may be imposed upon a certificate issued to such air carrier under such paragraph.

tificate or certificates of indefinite duration authorizing such applicant to engage in supplemental air transportation, as defined herein."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended by adding the following text: "A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board from placing such limitations on such certificates as it may find to be necessary to assure that the services are limited to supplemental air transportation as defined herein."

SEC. 4. (a) Any air carrier presently operating in interstate air transportation as a "supplemental air carrier" pursuant to authority received under order of the Board whose application for certification as a supplemental air carrier is pending before the Board or is filed with the Board within a period of one hundred and twenty days from the enactment of this section, may continue to operate in interstate, oversea, and territorial supplemental air transportation as defined herein until the effective date of an order of the Board disposing of such application. Any carrier whose operating authority in interstate air transportation under Board Order E-9744, adopted November 15, 1955, is continuing solely by virtue of a judicial stay is hereby authorized to continue to operate, subject to all conditions and limitations contained in such order or im-

House Report No. 1177
87th Congress, 1st Session

SUPPLEMENTAL AIR CARRIERS

SEPTEMBER 13, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 7318]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7318) to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and by inserting immediately after paragraph (31) the following new paragraphs:

* Numbers within dashes, used on the right, are the original page numbers of the document. These are the numbers referred to in Petitioners' Brief.

House Report No. 1177

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

SEC. 2. Subsection (d) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is amended by adding at the end thereof the following new paragraph:

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to as-

sure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

House Report No. 1177

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)) is amended to read as follows:

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change

schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board."

SEC. 4. Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"SPECIAL OPERATING AUTHORIZATIONS

"AUTHORITY OF BOARD TO ISSUE

"SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

"(1) that the capacity for air transportation being offered by the holder of a certificate of public con-

venience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.

"TERMS OF AUTHORIZATION

"(b) A special operating authorization issued under this section—

"(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and

"(3) shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

"PROCEDURE

"(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved."

SEC. 5. (a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States under a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board order E-9744 of November 15, 1955, and has pending before the Board an application

for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that, during the period beginning on the date such certificate was issued or such interim operating authority was conferred by the Board and ending on the date of enactment of this Act, such applicant or his predecessor in interest lawfully performed (A) a substantial portion of the transportation authorized by such certificate or interim operating authority, (B) substantial operations in overseas or foreign air transportation, as a supplemental or large irregular air carrier, authorized by the Board, or (C) substantial operations for the Military Establishment of the United States authorized by the Board;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act: *Provided,* That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect on or before the date of enactment of this Act, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred to the applicant with Board approval pursuant to section 401(h) of the Federal Aviation Act of 1958: *Provided,* That application under this section may also be made by a person who on the date of enactment of this Act had on file with the Board an application for

the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue to such person a new interim certificate or new interim operating authority under this section if it approves the transfer pursuant to section 401(h) of the Federal Aviation Act of 1958;

the Board, upon proof of such facts, shall issue a new interim certificate or new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority, or both, and subject to the terms, conditions, and limitations attached thereto, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 authorizing the whole or any part of the transportation covered by the application.

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show that it or its predecessor has received interim operating authority from the Civil Aeronautics Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's interim authority, and subject to the terms, conditions, and limitations attached thereto, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958

authorizing the whole or any part of the transportation covered by the application.

—4—

(c) A new interim certificate or new interim authority issued under this section shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

SEC. 6. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat 527), it may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, until the Board has granted or denied a new interim certificate or new interim authority under section 5 of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority for thirty days from

the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, until the Board has granted or denied a new interim certificate or new interim authority under section 5 of this Act.

(b) The certificates of public convenience and necessity issued by the Board pursuant to order E-13436 adopted January 28, 1959, and order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption authority issued by the Board under order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate on the date of an order of the Board granting or denying a new interim certificate or new interim authority under section 5 of this Act, or if the carrier files no application under section 401(d)(3) of the Federal Aviation Act of 1958 within thirty days from the date of enactment of this Act, at the end of said thirty-day period.

(c) Any air carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order which otherwise would terminate such operating authority, is hereby authorized to continue to operate, subject to the conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of the judicial review proceeding of such Board order, whichever shall first occur.

House Report No. 1177

SEC. 7. The provisions of this Act shall in no way affect the authority of the Board—

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board order E-13436 of January 28, 1959, or Board order E-14196 of July 8, 1959, or against the holder of any interim operating authority conferred by the Board under paragraph (2) of the first section of Public Law 86-661 or under Board order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or interim operating authority referred to in paragraph (1) of this section with respect to any violation of—

(A) the Federal Aviation Act of 1958,

(B) the provisions of such certificate,

(C) the terms of such operating authority, or

(D) the regulations of the Board,

without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of the holder of any certificate or interim operating authority referred to in paragraph (1) of this section for any violation referred to in paragraph (2) of this section, which violation occurred prior to

the issuance to such holder of a new interim certificate or new interim authority under section 5 of this Act of the

—5—

issuance to such holder of a certificate of public convenience and necessity to engage in supplemental air transportation under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958, may be imposed on the certificate or other operating authority issued to such holder under section 5 of this Act or under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958.

SEC. 8. Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 and others, shall be deemed to have been finally disposed of upon the date of enactment of this Act.

SEC. 9. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended to read as follows:

"SAFETY, ECONOMIC, AND POSTAL OFFENSES

"SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i) or any term, condition, or limitation of any permit or certificate

issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided,* That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

"(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of titles IV or VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged."

SEC. 10. Section 902(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(a)) is amended to read as follows:

"GENERAL

"SEC. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI,

VII, and XII), or any order, rule, or regulation issued under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise provided in this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense."

SEC. 11. (a) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE IV—AIR CARRIER ECONOMIC REGULATION" is amended by adding at the end thereof the following:

"Sec. 417. Special operating authorizations.

"(a) Authority of Board to issue.

"(b) Terms of authorization.

"(c) Procedure."

(b) That portion of such table of contents which appears under the heading "Sec. 901. Civil penalties." is amended by striking out

"(a) Safety and postal offenses." and inserting in lieu thereof

"(a) Safety, economic, and postal offenses.".

PURPOSE OF LEGISLATION

This legislation is needed to stabilize the supplemental air carrier industry. The reported bill would do this by giving the Civil Aeronautics Board authority to issue a new type of limited air carrier charter certificate and to grant permits to carriers holding such certificates to conduct, on a temporary basis, individually ticketed service to meet the public needs for air transportation in special situations.

Permanent legislation is needed so that the affected carriers can make longer range plans and financial arrangements for future operations.

As a result of court decisions, the Civil Aeronautics Board now lacks authority to license air carriers to conduct limited operations to supplement the services provided by the scheduled route carriers. The reported bill provides a means of accomplishing this without undermining the financial stability of the scheduled route carriers, a situation which could result in the curtailment of essential service or calls for additional subsidy, or both.

SUMMARY OF REPORTED BILL

The reported bill would—

(1) Authorize the Board to issue certificates to supplemental carriers to conduct charter operations;

(2) Provide a method whereby holders of supplemental certificates may furnish individually ticketed service on a temporary basis under regulations of the Board;

(3) Permit the Board to expedite procedures in the issuance of special operating permits authorizing such temporary service;

(4) Grant interim operating authority in the nature of grandfather rights to permit operations until the Board can pass upon applications for new certificates provided for by this legislation;

(5) Permit the Board to impose civil penalties for violations of the economic provisions of existing law and regulations issued thereunder, thus providing an effective method of deterring illegal operations detrimental to the public interest, which have penalized carriers operating in compliance with existing law. Penalties would follow the pattern set in existing law to enforce safety regulations.

COMMITTEE ACTION

The committee is reporting herewith a substitute for H.R. 7318, a bill drafted by the Civil Aeronautics Board to permit the granting of limited certificates to supplemental air carriers, authority which the U.S. Court of Appeals for the District of Columbia has held the Board does not have under existing law. H.R. 7318, as introduced, would have granted the Board the authority which the court held it did not possess and would have permitted the Board to authorize supplemental operations to continue along the lines of present operations.

The committee substitute, drafted after careful consideration by the full committee and the Subcommittee on Transportation and Aeronautics, would give the Board

some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate

—7—

supplemental carriers, especially, in the field of individually ticketed operations.

The subcommittee conducted hearings on June 20, 21, and 23, 1961, on H.R. 7318 by Mr. Williams, H.R. 7512 by Mr. Moulder, and H.R. 7679 by Mr. Collier, all members of this committee. Testimony was received from the following witnesses: Alfred F. Blatz, president, Blatz Airlines, Inc.; Hon. Alan S. Boyd, Chairman, Civil Aeronautics Board; Clayton L. Burwell, president, Independent Airlines Association; Ralph Cox, Jr., president, United States Overseas Airlines, Inc.; Robert E. Fraley, on behalf of Quaker City Airways, Inc., and Paul Mantz Air Services, Inc.; Ross I. Newman, Associate General Counsel for Rules and Legislation, Civil Aeronautics Board; George S. Patterson, general manager, President Airlines, Inc.; Reed Pigman, Independent Airlines Association; J. W. Rosenthal, Routes and Agreements Division, Bureau of Economic Regulation, Civil Aeronautics Board; Jesse Stallings, Independent Airlines Association; Cliff Stratton, Jr., Air Transport Association of America; Stuart G. Tipton, president, Air Transport Association of America; John H. Wanner, general counsel, Civil Aeronautics Board; and DeWitt T. Yates, general counsel, Independent Airlines Association.

House Report No. 1177

BACKGROUND INFORMATION

Origin of supplemental air carriers

The supplementals, also known as "non-skeds," did not make an appreciable impact on air commerce until after World War II, although such carriers had been in existence several years.

The Civil Aeronautics Act of 1938 stabilized the then existing route structure by giving "grandfather" rights to the 16 major, or trunklines, in existence at that time. Shortly after passage of this act, the Civil Aeronautics Board issued an order under section 416(b)[1] exempting

[1] SEC. 416. (a) • • •

EXEMPTIONS

(b) (1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not

the little nonscheduled operators who were offering now-and-then flights in small planes from their home bases to scattered destinations over the country.

Generally these operations were conducted with aircraft smaller than those used in regular scheduled service.

But after the war three new factors entered the picture. The military had a surplus of used aircraft for sale at cut rates. Thousands of trained and experienced pilots were discharged from the services. The established airlines were hard pressed to meet the boom in demands for air transportation following the war.

—8—

The result was a substantial increase in passenger-carrying operations by the nonscheduled operators. In a short time there were almost 150 of these operators in the field.

In an effort to provide more effective regulation of this transportation, the Board, in 1947, revised its exemption regulations to require these operators to obtain letters of registration. Two classes were established, designated "large irregulars" and "small irregulars." The carriers operating large, transport-type aircraft were prohibited from operating, or advertising to the public that they were operating, regularly or with a reasonable degree of regularity. These revised regulations established criteria under which the carriers could operate as many as 8 to 12 flights

---

adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this title, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or co-pilots. (Identical with sec. 416(b) of the Federal Aviation Act of 1958.)

per month carrying individually ticketed passengers between the same 2 points, depending on the spacing of flights and "breaks" in service.

Large irregular air carrier investigation

When it became apparent that the revised procedure was inadequate to cope with the regulatory problems encountered the Board in September 1951 instituted the large irregular air carrier investigation (docket 5132). In that investigation, where 66 nonskeds sought operating rights, the Board sought to determine—

(1) The future role of the large irregular carriers and the extent of operations which would be permitted;

(2) The selection of carriers to receive operating authority; and

(3) Whether the authority should be by certificate or by exemption.

After extended hearings, the Board in 1954, with some 30 applicants remaining to be heard, decided to expedite the proceedings by splitting it into two parts—

(1) The public interest issues (the role to be assigned the irregular carriers and the scope of operations to be authorized); and

(2) Consideration of individual qualifications.

Exemption authority for supplementals

On November 15, 1955, the Board, with three members for and two against, issued a decision (order E-9744) on

the public interest aspects of the case, finding that the irregulars comprise a "separate class of carriers" performing varied and flexible services. The Board found that the operations of these carriers would not adversely affect the certificated route carriers. The Board determined that unlimited charter authority should be granted, together with authority to perform individually ticketed or waybilled service not to exceed 10 flights per month in each direction between any 2 points. The 10-flight limitation was arrived at by averaging the 8 to 12 flights permitted under prior regulations.

This new authorization was granted to all members of the class on an interim exemption basis, pending the Board's final decision on the qualifications of individual carriers and the question of whether the final authority should be by certificate or by exemption.

The Board's decision of November 15, 1955, was challenged by the certificated industry, and on July 19, 1956, the Court of Appeals for the District of Columbia Circuit held the order invalid because the Board had not made appropriate findings to support its conclusion that a requirement of certification would be an undue burden on the carriers. The Supreme Court denied a petition for

writ of certiorari. On December 21, 1956, the court of appeals stayed the issuance of its mandate until 60 days after the date of the final Board decision in the *Large Irregular Carrier* case, docket 5132.

Certification of supplementals

On January 28, 1959, with two members, the Board issued its decision in docket 5132 granting temporary

certificates of public convenience and necessity for supplemental air service to 23 carriers found by the Board to be fit to provide the service authorized (order E-13436). On July 8, 1959, the Board issued 2 additional certificates (order E-14196) for a total of 25 such certificates. Under these certificates, supplemental air carriers were authorized to provide unlimited planeload charter service, and to conduct, without reference to any specific terminal or intermediate points, not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month in interstate air transportation.

Court decision on certification of supplementals

This decision was challenged in the U.S. Court of Appeals for the District of Columbia Circuit, and on April 7, 1960, the court found (*United Air Lines et al.* v. *Civil Aeronautics Board*) that the Board's action was legally deficient in three respects:

1. The certificates issued by the Board did not specify the terminal and intermediate points between which air transportation was authorized but granted a blanket authorization to operate between any two points in the United States.

2. The court held that the 10-flights-a-month limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules • • •"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations.

Concerning what should be done about the matter, the court said:

> If the requirements of section 401(e) interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there.

History of congressional action

The Board then submitted to Congress proposed legislation to give the Board the authority which the court held it did not have and this was introduced in the House and Senate (H.R. 7593 and S. 1543, 86th Cong., 2d sess.).

Hearings were held on May 23 and 24, 1960, but after consideration of the testimony, it was decided that the issues involved could not be considered adequately in the short time remaining before adjournment, and the committee recommended the enactment of temporary legislation maintaining the status quo to permit further consideration during the 87th Congress (H. Rept. 1877, 86th Cong., 2d sess.).

Subsequently Public Law 86-661 was enacted to permit continuation of supplemental air operations until March 14, 1962.

Early in the present session, the Board again submitted a draft bill to authorize the issuance of limited certificates for supplemental operations. This proposed legislation was introduced as H.R. 7318 and S. 1969.

Board Member Gurney did not join in the recommendation. His views are explained in a letter included hereafter in this report.

ROLE OF SUPPLEMENTALS

Need for charter service

Witnesses who testified in the hearings were in agreement that the basic role of the supplementals in the air transportation picture is to provide charter service.

Even the witness for the Air Transport Association, speaking for the scheduled airlines, while strongly opposing the granting of authority to the Board to issue certificates permitting individually ticketed, route-type service, supported legislation to clarify the Board's authority to issue certificates to the supplementals for all-charter operations.

That charter service is the mainstay of the supplementals is shown by statistics supplied the committee by the Civil Aeronautics Board during the hearings.

These statistics show that during fiscal year 1960, the certificated supplemental carriers generated approximately 1.8 billion revenue passenger miles as compared with 1 billion revenue passenger miles for fiscal 1959. This constituted 4.3 percent of the total revenue passenger miles generated by the air carrier industry, including the

certificated route air carriers. In 1959 the supplemental carriers obtained only 2.7 percent of the total revenue passenger miles.

The domestic traffic of the supplemental carriers increased from 312 million passenger miles in fiscal 1959 to 346 million in 1960. This traffic was 40 percent civilian and 60 percent military. The international traffic of the supplementals increased from 696 million passenger miles in 1959 to 1.4 billion in 1960, 18 percent of which was civilian and 82 percent military. This includes all traffic, i.e., individually ticketed, charter, and contract.

The supplemental carriers increased their total transport operating revenues from $51 million in 1959 to $59 million in 1960. Contract and charter services, both military and civilian, accounted for $40 million in 1959 and $48 million in 1960. Revenue from individually ticketed services, both passenger and freight, was $11 million in 1960, the same as in 1959.

Thus, it is clear that charters are the principal source of revenue for the supplementals.

The basic concept written into the substitute bill reported herewith is that the supplementals essentially are charter operators. The committee recognizes that under special circumstances and in temporary situations, individually ticketed supplemental service fills a definite need in our transportation system. The committee recognizes also that individually ticketed supplemental service must necessarily be subject to close scrutiny by the Civil Aeronautics Board to make certain that such service is restricted

to supplemental needs and does not provide unfair or discriminatory competition to scheduled carriers, whose

routes and operating conditions are necessarily to a large extent inflexible because of conditions which must be met to provide the service required for public convenience and necessity.

The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.

Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, *subject to the limitations contained in the reported bill.* This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications.

Individually ticketed operations

H.R. 7318, as introduced, would have authorized the Board to issue certificates without specifying the terminal and intermediate points, and with such limitations as to frequency of service, size or type of equipment, or otherwise, to assure that the service so authorized remained supplemental to the service of the certificated route carriers.

How much, if any, individually ticketed service supplementals should be authorized to perform is a very difficult and controversial question.

Supplementals now operating under Board authority are permitted to sell individually ticketed service, but in rendering such service are limited to not more than 10 trips per month between any two points.

House Report No. 1177

The legislation proposed by the Board would have permitted the issuance of certificates authorizing individually ticketed service "for such periods as may be required for the public convenience and necessity."

One of the principal reasons which the court assigned in its opinion in *United Airlines* v. *CAB* for invalidating the Board's action in granting supplemental certificates was that the certificates permitted operations between points selected by the carrier and did not specify the terminal points between which the carrier was authorized to engage in air transportation as required by section 401(e) of the act. The limitation on the number of trips, in lieu of specifying the terminal points, was likewise held by the court to violate the provisions of that subsection prohibiting the Board from placing a limitation in a certificate restricting the right of an air carrier to add to or change schedules.

In the hearings, both the Civil Aeronautics Board and the supplemental air carriers testified that such limited individually ticketed operations to supplement service by the scheduled carriers filled a real public need, were essential to the continued survival of the supplementals, and resulted in no demonstrable injury to the scheduled carriers.

The scheduled carriers opposed any authority for supplementals to conduct individually ticketed operations as a serious threat to the health and prosperity of the scheduled industry, citing the poor earnings of the scheduled carriers for the past 5 years. A witness for the industry testified that in 1960 the 12 domestic trunklines had a net profit of $1,188,000 on gross operating revenues of almost $2 billion.

Regulatory concepts of existing law

The so-called certificates issued by the Civil Aeronautics Board to the supplementals were illegal. This illegality was not a mere technical infraction of the act. It was fundamental. The 10-flight individually ticketed grant violated basic principles of the economic regulatory philosophy of the Federal Aviation Act of 1958. Thus, the act recognizes that a carrier's ability to provide good public service should not be hampered by artificial limits on the number of regular schedules for ticketed traffic it can operate over its routes. The act rejects the restrictionist philosophy prevalent in some foreign countries that a governmental bureau should divide the market by assigning each carrier an allowed number of flights.

The committee has carefully considered the testimony and all available evidence and failed to find any sound reason why these fundamental principles of the act should be changed. From the standpoint of good public service, and from the standpoint of opportunity for each carrier to compete and develop its business, any air carrier certificated to operate individually ticketed service over a route should be able to do so without CAB-imposed limitations on the frequency of service. If there is room for competition over a route, the CAB has authority in section 401 to certificate additional carriers. If there is not room for such competition, the Board should not be free to avoid the consequences of competition by limiting the volume of service to be provided by one, some, or all of the carriers in the market. Moreover, the committee does not consider it either feasible or desirable to authorize an air transport

system in which the amount of service is half regulated and half unregulated.

The committee recognizes, however, that there may be exceptional circumstances in which, for a limited period of time, it may be desirable for a carrier not regularly certificated for a route to be authorized to conduct ticketed operations over the route. Thus, during the Christmas holidays and other periods of peak or unusual traffic demand, where the capacity of the carrier or carriers serving the route may be insufficient to meet the demand, it may be desirable and economically sound for the Board to permit another carrier to provide supplemental service for a temporary period. The special operating authorization under the new section 417 is designed to meet this situation. In the committee's view, this type of special authority to supplement the service over a certificated route should be strictly limited in nature and of short duration—normally, not over 30 days.

It is the committee's view that the granting of such temporary special operating authority by the Board should not be regarded as constituting any vested right or interest in the route by the carrier so authorized. If the insufficiency of capacity is a chronic problem over the particular route, and can be solved only by an additional carrier, the solution should be in permanent or temporary certification under section 401(d) (1) or (2) of existing law.

The new section 417 would require that an authorization under that section contain limitations as to the amount of service or the type of equipment used to assure that it will meet the requirements for additional transportation with-

out significant diversion of traffic from the carriers holding certificates for the route. The section provides that such authorization shall be for not more than 30 days, but can be extended for additional periods aggregating not more than 60 days.

The Board is directed to establish a procedure for ex-

peditiously handling these situations. It is required to give written notice to the air carriers certificated to provide service between the points involved and to provide an opportunity for such carrier to protest the issuance of such operating authorization in writing. Whether the carrier would be heard orally in support of the protest would be a matter for the Board's discretion, taking into account the degree of emergency involved in meeting the shortage.

A conscientious effort to make maximum use of this section will provide the Board with greater flexibility in meeting seasonal traffic peaks than it has ever had heretofore, and it will also provide the supplemental air carriers with an effective means of providing a needed public service to supplement the existing air transportation system. The committee believes that there is no provision of the bill which, if properly used, would contribute more directly to providing the public with more convenient and adequate air transportation.

PROVISIONS FOR ENFORCEMENT

The grants of individually ticketed authority in the past led to a multitude of enforcement problems and evasions, which the Board has been unable to cope with under existing law.

Supplemental carriers on occasion have entered into illegal pooling arrangements to provide what amounts to scheduled service contrary to the intent of the Board. Board efforts to end such practices have been frustrated by protracted litigation. Judicial stays of Board orders have permitted the continuation of highly profitable, although palpably illegal, operations by some of the carriers.

Although such operations have never been conducted by any large number of carriers, the record shows that the resultant diversion of traffic from carriers operating legally has been substantial, to the detriment not only of scheduled carriers but of those supplementals operating legally.

In an effort to protect both the supplementals and the scheduled industry by making such illegal operations unprofitable, the committee has accepted the recommendations of the Civil Aeronautics Board by extending the civil penalty provisions of the Federal Aviation Act of 1958 to cover violations of the economic provisions of title IV and of certificates issued thereunder. This has been accomplished by incorporating into the reported bill the provisions of H.R. 7303, a bill recommended by the Civil Aeronautics Board to authorize the imposition of civil penalties in certain cases, to permit a civil penalty of not to exceed $1,000 for each violation.

INTERIM OPERATING AUTHORITY

The interim operating authority in the nature of "grandfather" provisions in sections 5 and 6 of the reported bill are designed to permit the existing supplemental carriers

to operate until such time as the Board can pass upon applications for new certificates under the terms of this legislation.

The committee believes that the provisions of sections 5 and 6 strengthen the bill and will have the effect of eliminating various complexities resulting from a series of exemptions, orders, and stays, without injustice to the carriers involved.

—14—

Section 6 of the bill requires any carrier desiring to continue to operate in the future as a supplemental air carrier to file a new application under section 401(d)(3) seeking such certificate within 30 days from the time of enactment of the bill. If no application for a new certificate is filed within that period, the carrier's present authority will terminate, whether derived from an exemption, a certificate, or interim operating authority under Public Law 86-661. Any carrier which files an application for a certificate within 30 days is permitted to continue to operate under its present authority until the Board acts under section 5 of the bill. When the Board acts under section 5, the existing authority of a carrier will terminate, whether that authority is derived from a certificate, an exemption, or interim operating authority under Public Law 86-661.

If a carrier files a new application for a certificate as a supplemental air carrier under section 401(d)(3) within 30 days after enactment of this bill, the Board will next consider whether such carrier should be issued new interim authority to engage in supplemental air transportation pending Board action on the certificate application. The committee is aware that the issuance of new interim authority identical to that which the carriers now hold, rather

than an extension of their present certificate or exemption, may appear to be an unnecessary step. Only those who have been forced to wind their way through the Chinese maze of orders and exemptions can appreciate how directly the public interest would be served by the issuance of a new single order clearly specifying what carriers are permitted to conduct what operations pending action on their certificate applications.

The Board is directed to issue new interim authority to four categories of carriers. As of this time the first category consists of a single carrier, Vance Roberts, which was given operating authority by the Board pursuant to section 1(2) of Public Law 86-661. Since the Board has just acted on this application within the last few months, the bill requires the automatic issuance by the Board of new interim operating authority without any further showing by the carrier.

The remaining three categories of carriers holding some form of operating authority from the Board must satisfy certain specific requirements before the Board is required to issue new interim operating authority to them. These requirements have been included in section 5 by the committee to insure that the effect of the grandfather provisions is to avoid hardship by permitting legally operating carriers to continue to operate, and not to revive dormant carriers which have not operated. A carrier which is not now operating will have the same right as a new applicant to apply for and receive a certificate as a supplemental air carrier. Justice does not require that such a carrier be permitted to begin operations prior to the time that the Board has passed on its application for a certificate.

House Report No. 1177

A carrier in one of these three categories must be able to show that between the dates of issuance of its operating authority and of the enactment of this bill, it performed a substantial portion of the service authorized by its certificate or other operating authority or substantial operations in overseas or foreign air transportation authorized by the Board or substantial operations for the Military Establishment as authorized by the Board; that such certificate or operating authority has not been revoked or otherwise terminated by the Board; and that the certificate or operating authority is held by the original grantee or has been

transferred with the Board's approval. Special provision is made for an application for transfer which may be pending at the time of enactment of the bill. The following, then, are the three categories of carriers which may be entitled to receive new operating authority under section 5. The categories are mutually exclusive. A carrier is in one category, and one only, or in none.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-13436, of January 28, 1959. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

House Report No. 1177

CARRIERS	COMMENT
American Flyers Airline Corp.	
Arctic-Pacific, Inc.	Certificate expired May 30, 1961; no application for renewal was filed. Authority terminated by Board Order E-16734 of April 28, 1961.
Associated Air Transport, Inc.	
Aviation Corp. of Seattle, d/b/a Westair Transport	Application for transfer and renewal of certificate pending.
Blatz Airlines, Inc.	
Capitol Airways, Inc.	
Coastal Air Lines (formerly Coastal Cargo Co., Inc.)	
Conner Air Lines, Inc.	No transport operations performed in supplemental air service during test period.
General Airways, Inc.	Certificate sold by trustee in bankruptcy but no application for transfer to the purchaser has been filed.
Imperial Airlines, Inc. (formerly Regina Cargo Airlines, Inc.)	
Johnson Flying Services, Inc.	
Paul Mantz Air Services	

CARRIERS	COMMENTS
Modern Air Transport, Inc.	
Overseas National Airways	
President Airlines, Inc. (formerly California Eastern Aviation, Inc.)	
Saturn Airways, Inc. (formerly All-American Airways, Inc.)	
Sourdough Air Transport	
Southern Air Transport, Inc.	
Standard Airways, Inc.	
Stewart Air Service	
Transocean Airlines	
United States Overseas Airlines, Inc.	
World Airways, Inc.	

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to Order E-14196, of July 8, 1959. The committee is aware of no circumstance which would prevent their receiving interim operating authority.

Trans International Airlines, Inc. (formerly Los Angeles Air Service, Inc.)	
Quaker City Airways, Inc.	

The following carriers were given interim authority to operate in interstate air transportation as a supplemental

air carrier under Board Order E-9744, of November 15, 1955, and have pending before the Board applications for

a certificate as a supplemental air carrier which were filed prior to July 14, 1960. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

CARRIERS	COMMENT
Air Cargo Express, Inc.[1]	No transport operations performed in supplemental air service during test period.
Airline Transport Carriers, Inc., d/b/a California Hawaiian Airlines.	
Argonaut Airways Corp.	
Meteor Air Transport, Inc.	Operating authority terminated by Order E-15183 of May 4, 1960.
Miami Airline, Inc.	
S.S.W., Inc.	Operating authority terminated by Order E-15252 of May 20, 1960.
World Wide Airlines, Inc.	

There remains one additional category of carriers for which the bill makes special provision. Four carriers were

[1] The certificate application of Air Cargo Express, Inc., was denied in Order E-13436, but the Board action reversed and the application remanded for further proceeding by the Court of Appeals for the District of Columbia in the case of *Great Lakes Airlines et al.* v. *C.A.B.*, decided Feb. 24, 1961.

given exemption authority for supplemental air service by Order E-9744, but have no applications for certificates pending before the Board because their operating authority under the exemption order was specifically terminated by the Board in Order E-13436. These carriers appealed the Board's order denying a certificate and revoking their exemption authority to the courts and are now operating under a judicial stay pending review. Certiorari has been denied by the Supreme Court, but a petition for reconsideration of this action is pending. Carriers in this category are Central Air Transport, Inc., Curry Air Transport, Ltd., Great Lakes Airlines, Inc., and Trans-Alaskan Airlines. Section 6 provides that these carriers are authorized to continue to operate subject to all conditions contained in Order E-9744 or imposed by the court until the court shall lift its stay or until final disposition of the judicial proceeding.

NEED FOR LEGISLATION

The supplemental carriers constitute an important element in national defense. During the Berlin airlift, with only 5 percent of the Nation's civil air transport capacity, these carriers moved approximately 25 percent of the passengers and 57 percent of the cargo carried by civilian aircraft. In 1950, the supplementals supported the Korean airlift by supplying over half the commercial capability requested by the military. The supplementals flew the first planes to Vienna in 1956 to provide airlift for Hungarian refugees. In the Lebanon crisis, the supplementals offered the military 38 four-engine aircraft within 4 hours.

The Department of the Air Force, in a letter included hereafter in this report, stated that continued existence of the supplementals is a real value in terms of national defense.

The Civil Aeronautics Board in December 1955 characterized the supplementals as: "A reserve air fleet, capable of being called into action to meet emergency transportation needs with a minimum amount of notice."

The legislation reported herewith is needed to stabilize the supplemental industry, which has existed in an atmosphere of uncertainty for many years.

Enactment of this legislation will give the supplemental industry a more permanent role in air transportation. It will permit the industry to make plans for the future and to complete financial arrangements for the purchase of modern equipment requiring amortization over a period of years. A more permanent status will brighten the economic outlook for the industry which, a witness testified in the hearings, has shown losses from 1957 to date, after making a profit in 5 of the 7 years between 1950 and 1957.

SECTION-BY-SECTION EXPLANATION OF THE COMMITTEE AMENDMENT

The following is a section-by-section explanation of the substitute amendment reported by the committee. Unless otherwise indicated, existing law referred to is the Federal Aviation Act of 1958.

Section 1

This section would amend section 101 of existing law by adding a new paragraph (32) defining the term "supple-

mental air carrier" and a new paragraph (33) defining the term "supplemental air transportation."

"Supplemental air carrier" would be defined as an air carrier holding a certificate of public convenience and necessity authorizing such air carrier to engage in supplemental air transportation.

"Supplemental air transportation" would be defined as charter trips in air transportation rendered pursuant to a certificate issued by the Civil Aeronautics Board to supplement the scheduled service authorized to be performed by the certificated route air carriers, but would not include the transportation of mail by aircraft.

Section 2

This section would amend section 401(d) of existing law by adding a new paragraph (3) which would authorize the Civil Aeronautics Board to issue to any applicant, other than a certificated route air carrier, a certificate of public convenience and necessity to engage in all or any part of the supplemental air transportation covered by the application. The Board could issue such certificate for such periods as it determines that the transportation for which authority is sought is required by the public convenience and necessity. Before issuing such a certificate, the Board would be required to make a determination that the applicant is fit, willing, and able to perform the transportation authorized by the certificate and to conform to the provisions of existing law and the regulations of the Board issued thereunder. Under the amendment to existing law made by section 3 of the committee substitute, each supplemental certificate would designate the terminal and inter-

mediate points between which the air carrier concerned could operate, or, if the Board determines that such designation is not practicable, the certificate would designate the geographical area or areas within or between which such air carrier could operate. The standard of fitness to be applied by the Board to an applicant for a supplemental certificate could vary according to the scope of the transportation authority granted by the certificate. It is obvious, for example, that the fitness requirements of the Board

with respect to the financial resources of an applicant could vary considerably as between an applicant seeking unlimited authority to engage in supplemental air transportation within a large geographical area and an applicant seeking limited authority to engage in such transportation between two specific points. The Board also would be required to include in each supplemental certificate such limitations as it finds necessary to insure that the service rendered thereunder will be supplemental to the scheduled service authorized to be performed by certificated route air carriers.

Section 3

This section would amend section 401(e) of existing law by dividing it into six numbered paragraphs as follows:

1. Paragraphs (1) and (2) would repeat provisions presently contained in section 401(e) of existing law (relating to terms of certificates held by air carriers) without substantive change.

2. Paragraph (3) would be added to such section 401(e) of existing law so as to require that each supplemental

certificate issued by the Civil Aeronautics Board designate the terminal and intermediate points between which the air carrier is authorized to operate, unless the Board determines that such designation of points is not practicable. If the Board determines that such designation of points is not practicable, it would be required to designate the geographical area or areas within or between which the air carrier is authorized to operate.

3. Paragraph (4) would repeat the provision of such section 401(e) of existing law which prohibits the imposition of limitations on a certificate of public convenience and necessity restricting the right of an air carrier to change schedules, equipment, accommodations, and facilities for performing the authorized transportation as may be required by the development of the business and the public demand. This provision would be amended so as to permit the Board to impose such limitations on a supplemental certificate whenever the Board deems it necessary in order to insure that the service rendered thereunder will be supplemental to the service authorized to be rendered by certificated route air carriers. The imposition of such limitations would continue to be prohibited with respect to certificates issued to scheduled route air carriers.

4. Paragraph (5) would repeat the provisions of section 401(e) of existing law (relating to operations of air carriers during an emergency) without substantive change.

5. Paragraph (6) repeats the provision of section 401(e) of existing law authorizing any air carrier to perform charter trips or any other special service, under Board

regulation, without regard to points specified in its certificate. This provision would be amended so as to exclude from this authorization any air carrier holding a supplemental certificate issued by the Board under the proposed new section 401(d)(3).

Section 4

This section would add a new section 417 to existing law to permit the Civil Aeronautics Board to issue to a supplemental air carrier a special operating authorization under which such air carrier would have limited authority to engage in air transportation, temporarily, between specified points. It would be under this provision of the committee substitute that supplemental air carriers could be

authorized to engage in individually ticketed and individually waybilled operations.

Subsection (a) of the proposed new section 417 would grant the Board authority to issue a special operating authorization to a supplemental air carrier (but not to a certificated route air carrier) to engage in air transportation temporarily between specified points. Such authorization could be issued only if the Board finds, after an investigation, that the capacity for air transportation between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service, or, that there is a temporary requirement for air transportation between two points, one or both of which are not regularly served by any air carrier. The Board also would be required to find that a supplemental air carrier can provide the additional service temporarily required in the public interest.

House Report No. 1177

Subsection (b) of the proposed new section 417 would require, in effect, that each special operating authorization contain such limitations as the Board determines to be necessary to insure that the air transportation authorized thereunder will alleviate the temporary insufficiency in air transportation found to exist, without a significant diversion of traffic from certificated route air carriers holding certificates authorizing them to engage in air transportation between the points involved. No such special operating authorization could be issued for more than 30 days. However, the Board could extend a special operating authorization for additional periods aggregating not more than 60 days, thus enabling the holder of such authorization to continue operations for a total of not more than 90 days.

This subsection also would provide that a special operating authorization shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act. The purpose of this provision is to make it clear that such authorization is not to be considered a license to engage in any activity of a continuing nature such as would enable the holder thereof to file an application for renewal before the expiration of the authority granted and continue to operate until the Board could dispose of such renewal application. This provision would not prevent the holder of a special operating authorization from applying for a renewal thereof, subject to the limitations contained in the proposed new section 417, but it would prevent such holder from continuing to operate after the expiration of such authorization unless the Board had affirmatively renewed it.

Subsection (c) of the proposed new section 417 would require the Board to prescribe regulations establishing proce-

dures for the expeditious handling of requests for special operating authorizations. The Board would be required to include in such procedures written notice to certificated route air carriers authorized to engage in air transportation between the points involved so as to give such air carriers an opportunity to protest the issuance of a special operating authorization affecting such points. Since the issuance of a special operating authorization would depend upon the fact that air transportation being offered between particular points had been found to be temporarily insufficient to meet the needs of the public or the postal service, it is obvious that the Board must be able to act with reasonable speed in order to alleviate such temporary insufficiency of air transportation. Therefore, there is no specific requirement that the Board conduct a hear-

ing at which it would be required to take evidence from opposing parties, and oral argument before the Board is left to its discretion. The Board could conduct such a hearing and provide for oral argument if the circumstances of the case would permit such procedures without causing undue delay in the issuance of the special operating authorization involved. The discretion vested in the Board is necessary to enable it to carry out its duty, under the proposed new section 417, of handling requests for special operating authorizations as expeditiously as possible, taking into account the degree of emergency involved.

Section 5

Under subsection (a) of this section the Board would be required to issue a new interim certificate or new interim operating authority (in the nature of temporary grand-

father rights) to any applicant who, within 30 days after the enactment of this legislation, applies to the Board for a certificate to engage in supplemental air transportation and can show the Board—

(1) that it holds authority previously granted by the Board to engage in interstate air transportation as a supplemental air carrier and has an application pending before the Board for certification as a supplemental air carrier which was filed before July 14, 1960 (the date of enactment of Public Law 86-661, enabling the Board to authorize supplemental air transportation on a temporary basis);

(2) that it has conducted substantial operations under such authority, or substantial operations (authorized by the Board) in oversea or foreign air transportation as a supplemental or large irregular air carrier, or substantial operations (authorized by the Board) for the Military Establishment of the United States;

(3) that the operating authority held by the applicant had not been terminated by the Board, or had not expired, before the enactment of this legislation (such authority would be deemed to have been so terminated if the Board had issued a final order to that effect on or before the date of enactment of this legislation, notwithstanding a pending judicial review of such Board order); and

(4) that such operating authority is held by the original grantee or has been transferred to the ap-

plicant with Board approval. (Provision is also made for the extension of grandfather rights under this section to a person who has an application pending before the Board for approval of a transfer to him of operating authority referred to in this section, but the Board could not extend grandfather rights to such person unless it approves such transfer.)

The new interim certificate or new interim authority issued by the Board under this section would replace the certificate or interim operating authority held by the applicant at the time of the enactment of this legislation and would be valid until the Board grants or denies the applicant's request for the supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Subsection (b) of this section would enable an air carrier which holds interim operating authority to engage in supplemental air transportation under Public Law 86-661 to

qualify for new interim authority (in the nature of temporary grandfather rights) by applying for a supplemental certificate under the proposed new section 401(d)(3) within the 30-day period following the enactment of this legislation and by showing that it or its predecessor received interim operating authority under such Public Law 86-661.

Subsection (c) of this section would provide that a new interim certificate or new interim authority issued under this section shall not be deemed to be a license within the meaning of section 9(b) of the Administrative Procedure Act. The purpose of this provision is to make it clear

that any such certificate or authority would be valid only until the Board grants or denies the applicant's request for a supplemental certificate under the new section 401(d)(3) proposed by section 2 of the committee substitute. In other words, the certificate or authority issued under section 5 shall not be considered a license to engage in any activity of a continuing nature so as to enable the holder thereof to file an application for renewal and continue to operate until the Board can dispose of the renewal application.

Section 6

Subsections (a) and (b) of this section would enable any air carrier, with certain exceptions noted in the explanation of subsection (c) of this section, which is presently operating in air transportation as a supplemental air carrier under authority previously granted by the Board to continue its operations, for a limited period of time, under the terms of such authority. If such air carrier does not file an application with the Board for a supplemental certificate under the proposed new section 401(d)(3) within the 30-day period following the enactment thereof, its authority to operate in air transportation as a supplemental air carrier, previously granted by the Board, would be terminated upon the expiration of such 30-day period. If such air carrier does file such an application within such 30-day period, it would be able to continue its operations under the terms of the authority previously granted, until the Board grants or denies the issuance to such air carrier of a new interim certificate or new interim authority (tem-

porary grandfather rights) under section 5 of the committee substitute. As noted previously in the explanation of such section 5, the new certificate or authority issued thereunder would be valid until the Board grants or denies such air carrier's request for a supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Subsection (c) of this section would permit certain air carriers who previously received authority from the Board to operate in air transportation as supplemental air carriers, and who are presently continuing their operations solely by virtue of a judicial stay of an order of the Board terminating such authority, to continue their operations until such judicial stay is lifted or until the final disposition of the judicial review proceeding of such Board order, whichever first occurs. The significance of this provision is that it would permit a group of air carriers (referred to as the "Great Lakes group") to continue operations until the courts have finally disposed of their case. The operating authority of this group was previously terminated by the Board because they were found to have operated illegally. Of course, this provision does not prevent any air carrier in the so-called Great Lakes group from applying for a new supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Section 7

This section would preserve to the Board authority to institute or maintain enforcement proceedings against any

air carrier which obtains a new interim certificate or new interim authority under the grandfather provisions of this legislation, or obtains a new supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3), for violations committed by such air carrier with respect to the provisions of existing law, the terms of any certificate or other operating authority held by such air carrier, or Board regulations, without regard to when such violations occurred. This provision also would permit the Board to impose sanctions for such violations upon (1) the existing authority held by the air carrier concerned, (2) the new interim certificate or new interim authority issued under the grandfather provisions of this legislation, or (3) the supplemental certificate issued under the proposed new section 401(d)(3).

Section 8

This section provides that applications of air carriers filed in the Large Irregular Air Carrier Investigation (Docket No. 5132, and others) would be deemed to have been finally disposed of by the Board on the enactment of this legislation. The investigation referred to was begun by the Board in 1951 and had as one of its purposes the determination by the Board of the proper role of supplemental air carriers in this Nation's system of air transportation. Since this legislation would amount to a policy declaration by the Congress as to the role of supplemental air carriers in our system of air transportation, it is appropriate to provide for the termination of the Board's investigation into this question upon the enactment of this legislation.

House Report No. 1177

Section 9

This section would amend section 901(a) of existing law so as to enable the Board to impose civil penalties for violations of the economic provisions of existing law, and the regulations and orders of the Board issued thereunder. At the present time such violations are subject to criminal prosecution, under section 902(a) of existing law, if such violations are committed "knowingly and willfully." In the case of minor violations or actions falling short of knowing and willful misconduct, criminal prosecution may be too drastic or inappropriate. The availability of the civil penalty would enable the Board, in acting upon less serious violations, to improve the enforcement program with respect to economic violations by speedily imposing civil penalties, thus avoiding situations such as have existed in the past where offenders have been able to persist in violations during the time required to prosecute a formal proceeding or court action. This section also would add to the civil penalties section of existing law a provision (similar to the provision applicable in the case of criminal penalties) that, if any economic violation is a continuing one, each day of such violation shall constitute a separate offense. No change is made in the amount of the civil penalty which could be imposed, which amount is set forth in existing law as "a civil penalty of not to exceed $1,000" for each violation. The Board would have authority to compromise any civil penalty imposed by it.

The amendments to the civil penalties section of existing law proposed by this section of the committee substitute

would not be limited in application to violations com-

mitted by supplemental air carriers, but would include violations by certificated route air carriers or any other person.

Since this section of the committee substitute would not take effect until the date of enactment of this legislation, the Board could not impose civil penalties for economic violations committed before such date of enactment.

Section 10

This section would amend section 902(a) of existing law so as to preserve the criminal penalties contained in such section for knowing and willful violations of the economic provisions of existing law. Such section 902(a) contains an exception clause which excepts from the provisions of such section violations "for which no penalty is otherwise herein provided." Under the amendment made by section 9 of this legislation, economic violations would be subject to the civil penalties provided for in section 901(a) of existing law. If the phrase "for which no penalty is otherwise herein provided" contained in section 902(a) of existing law is interpreted to refer to violations for which no penalty is otherwise provided in the Federal Aviation Act of 1958, rather than violations for which no penalty is otherwise provided in such section 902(a), the application of civil penalties to economic violations would place such violations within the exception clause of such section 902(a). To prevent the possibility of such an interpretation, the language of the exception clause would be changed to read as follows: "for which no penalty is otherwise provided in this section." Thus, it would be clear that the criminal penalties remain applicable to economic violations.

House Report No. 1177

Section 11

This section would make technical amendments to conform the table of contents contained in the first section of existing law with the changes made by the committee substitute.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL AVIATION ACT OF 1958

* * * * *

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—

* * * * *

(32) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(33) "Supplemental air transportation" means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized

remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401 (d) (1) and (2) of this Act.

[(32)] (*34*) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] (*35*) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

* * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

Certificate of Public Convenience and Necessity

CERTIFICATE REQUIRED

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

House Report No. 1177

NOTICE OF APPLICATION

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.

ISSUANCE OF CERTIFICATE

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such

transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

(ii) If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—

(A) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted

January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;

(B) that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and

(C) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h): Provided, That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue a certificate here-

under if it approves the transfer pursuant to section 401(h) of this Act;

the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supple-

mental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto for such period as the Board deems proper: Provided, That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof.

TERMS AND CONDITIONS OF CERTIFICATE

(e) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the busi-

ness and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board. *A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: Provided, That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d).*

—27—

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED.

For the information of the Members of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

* * * * *

House Report No. 1177

AGENCY REPORTS

The committee considered the following letters:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 16, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, House Office Building,
Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in reply to your requests of June 8 and June 9, 1961, for reports on H.R. 7318 and H.R. 7512, bills to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

The Department of Commerce and the Civil Aeronautics Board in statements to your committee indicate that the supplemental air carriers perform a useful public service and help meet the Nation's air transportation needs. The Bureau of the Budget concurs generally in the statements of those agencies and recommends enactment of legislation

to authorize the Civil Aeronautics Board to issue limited certificates of public convenience and necessity for air services supplemental to those provided by the regular common carriers. Since H.R. 7318 was drafted by the Board to give it the authority it believes necessary for this purpose, we recommend it be enacted rather than H.R. 7512.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

House Report No. 1177

THE SECRETARY OF COMMERCE,
Washington, D.C., June 19, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of June 9, 1961, requesting the views of the Department on H.R. 7318 and H.R. 7512, bills to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

H.R. 7318 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized; that the Board be authorized to grant blanket authorization without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. H.R. 7318 would also provide for grant of statutory operating rights to the existing holders

of supplemental air carrier certificates, in the nature of grandfather rights.

H.R. 7512 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under section 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request a certificate of public convenience and necessity which limits the holder to performance of unlimeted passenger or individually waybilled cargo operations. ited planeload charter operations, limited individually tickand the right of first refusal in the operation of all charter operations; that the Civil Aeronautics Board be authorized to grant a blanket authorization without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. H.R. 7512 would also provide for grant of statutory operating rights to the existing holders

of supplemental air carrier certificates, in the nature of grandfather rights.

On January 28, 1959, in the *Large Irregular Air Carrier Investigation,* CAB docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any

single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines et al.* v. *Civil Aeronautics Board* (278 F. 2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed civil reserve air fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD domestic wartime requirements, such as the Navy's quicktrans and the Air Force's logair operations, and for the needs of the civil economy under the war air service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

The Department supports the purpose of these two similar bills but considers the provisions of H.R. 7318 as being more likely to achieve their desired aims. We recommend against the provision in H.R. 7512 that would give the supplemental carriers the right of first refusal in the operation

of all charter trips in interstate, overseas, and foreign air transportation. It is our view that such a provision would give the supplemental carriers an unwarranted competitive advantage over the regularly authorized air carriers and that it could cause undue burden on those persons desiring charter flights by limiting at the outset their choice of carrier.

Furthermore, the provisions in H.R. 7512 limiting the frequency of individually ticketed or individually waybilled

cargo operations to 192 flights per year appears to be arbitrary. We are of the opinion that H.R. 7318 gives authority to the Board to furnish the necessary protection without setting a limitation that may be harmful to the supplemental carriers, the regularly certificated carriers and the traveling public.

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

CIVIL AERONAUTICS BOARD,
Washington, D.C., June 20, 1961.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: While I agree with my colleagues on the Civil Aeronautics Board that legislation by the Congress is required to authorize the Board to issue certificates of public convenience and necessity for supplemental air transportation, I differ as to the type of certificates which the Board should be empowered to issue. I would urge the Congress to enact legislation authorizing the Board to issue supplemental certificates limited to the

operation of charter services only without regard to the other limitations in the act. This opinion is based upon my experience of over 10 years as a member of the Civil Aeronautics Board supported by statistics which indicate little need for supplemental air service other than charter operations.

As you and the members of your committee know, the need for this additional legislation has resulted from a reversal by the U.S. Court of Appeals for the District of Columbia Circuit (*United Air Lines, et al.* v. *C.A.B.*, 278 F. 2d 446) remanding the decision of a majority of the Board in the *Large Irregular Carrier Investigation*, docket No. 5132. Further court proceedings on this matter have been stayed pending the enactment of further legislation or the expiration of Public Law 86-661 enacted by the Congress last year to preserve the status quo for 20 months from July 14, 1960. In the *Large Irregular Carrier* case, the Board awarded certificates of public convenience and necessity to 23 former large irregular carriers to engage in interstate air transportation limited to 10 round trip flights per month between any 2 points carrying individual ticketed passengers or cargo, but unlimited as to charter flights. Further proceedings were ordered with respect to eight additional carriers. The 10-trip authority, for example, permits a carrier to operate 10 round trips monthly

between New York and Los Angeles in addition to 10 round trips per month between any other 2 points in the United States. The authority to operate between any two cities in the United States simultaneously is limited only by the availability of equipment by each carrier. With this au-

thority, the supplemental carriers could concentrate their operations in the heavy traffic markets on which the trunkline carriers depend for their financial success. Additional competition in route-type operations by a substantial number of supplemental carriers is certainly not required or necessary. The financial condition of the trunkline industry today as evidenced by the losses experienced by several of the carriers during the past year and the first quarter of 1961 shows that it cannot stand additional competition.

The certificated domestic air carrier route system links every major metropolitan area with each other and with more numerous smaller communities. The 11 trunkline carriers and the 13 subsidized local service carriers currently provide air service to 576 cities and towns in the continental United States. Thus the trade and vacation routes are more than adequately served by these route-type carriers which are required by law to render adequate service according to the needs of the communities.

The supplemental carriers enjoying the best financial condition today are for the most part those carriers which have through the years concentrated on developing the charter market rather than holding out to the individual ticketholder. For example, the Board's records show that for the year ending June 30, 1960, the supplemental carriers received operating revenues of $50,417,000 for their civilian and military charter sales while grossing transport revenues of $13,580,000 in operations other than charters. (These statistics do not include revenues of two carriers which are involved in enforcement proceedings for violations of their authority as large irregular carriers.) Of all the carriers operating supplemental services, 76

percent of the total noncharter revenues were received by only three carriers. Of these carriers, one is now bankrupt and another is operating only pending appeal of the Board decision denying it continuing authority. The third carrier although receiving 40 percent of its income from individual ticket operations, showed a net loss on all operations of $577,000 in 1960, and $1,350,000 in 1959.

A vast majority of the supplemental carriers, therefore, are not engaging in individual ticketing or waybill operations. In fact, 14 of these carriers engaged in no individual ticket or waybill operations during the 12 months preceding June 30, 1960. It is my conclusion, therefore, that since only a limited few carriers have used the individual ticket and waybill authority from 1955 to the present, little need exists for this type of service. If, at any time, an emergency should develop requiring the services of the supplemental carriers for purposes other than charters, the Board can invoke its authority under section 416(b) of the act to authorize such operations.

The Board has encouraged the supplemental carriers to develop the charter market by permitting these carriers to operate a charter exchange whereby a charter group is assured of the availability of an aircraft to suit its needs by negotiating with one central source which in turn has available the entire supplemental air carrier fleet. The Board disapproved a similar arrangement organized by the trunk-

line carriers to protect the supplemental carriers from unwarranted competition in developing the charter market. It is my firm belief that the future of the supplemental air carrier industry lies in the further development of the

charter market—and not in attempting to engage in route-type operations of any kind.

One additional point requires elaboration. One of the bills (H.R. 7318) under consideration proposes an amendment of section 401 of the Federal Aviation Act to authorize the Board to issue supplemental certificates for interstate, oversea, and foreign air transportation. It is urged that the amendment be limited to interstate operations only. Currently, the international routes to and from the United States are served by several U.S.-flag carriers who are competing with approximately 67 foreign air carriers. As a result of this competition, the market for the U.S.-flag carriers has decreased substantially each year for several years. In 1950 our flag carriers carried 74.7 percent of the market, but in 1960 carried only 54.7 percent of the total passenger traffic. Although the traffic in numbers of passengers has increased considerably during this period, unlimited competition by the supplemental carriers could very well cause the frequency and quality of our flag services to deteriorate. This in turn would seriously affect their financial condition.

The Board has certificated 10 all-purpose carriers to operate major international routes. Five of these carriers reported losses on their international operations for the years 1959 and 1960. The U.S. international all-cargo carriers are also experiencing severe financial difficulties as is an all-cargo carrier on an oversea route. The certification of an unlimited number of supplemental carriers in the international field may well pose a further threat to the financial condition of the existing carriers on these routes.

The large irregular carriers, predecessors to the supplemental air carriers, have had authority to operate cargo flights internationally, but few have sought to use this authority over the years. It is apparent, therefore, that little need exists for oversea or foreign supplemental air transportation of any kind and it is urged that such authority be deleted from the proposal.

Failure to include oversea and foreign supplemental air transportation in the proposed amendment does not mean that the supplemental carriers will be excluded from participation in either civilian or military international movements—as again the Board has ample authority under section 416(b) of the act to exempt air carriers for individual flights or for operations for a limited time for any national defense need or other emergency.

Respectfully submitted.

CHAN GURNEY.

DEPARTMENT OF THE AIR FORCE,
Washington, July 29, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 7512, 87th Congress, a bill to amend the Federal Aviation Act of 1958, as

amended, to provide for a class of supplemental air carriers, and for other purposes. The Secretary of Defense

has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Federal Aviation Act of 1958 to provide for a class of supplemental air carriers, and for other purposes. This proposed legislation is similar to H.R. 7318, 87th Congress, on which a separate report has been written.

This proposed legislation has been brought about by virtue of a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *United Air Lines, et al.* v. *Civil Aeronautics Board* (278 F. 2d 446 (1960)). (See 364 U.S. 297, where petition for certiorari was granted.) In that case the court found that the Civil Aeronautics Board's prior actions in certificating supplemental air carrier operations were legally deficient in three separate areas. The effect of the court's holding was that the Board did not possess the legal power to grant certificates of public convenience and necessity to authorize supplemental air transportation. Thus, those carriers who held certificates to engage in supplemental air transportation did not then have legal operating authority. As a stopgap measure Congress enacted Public Law 86-661, approved July 14, 1960, which measure was designed to preserve the supplemental air carrier industry for a period of 20 months, and until the matter could be studied more fully. The proposed legislation is designed to be of a permanent nature and, in effect, to replace the temporary stopgap legislation which allows the supplemental air carrier industry to operate for only 20 months from July 1960. In effect, the Board has found that supplemental air carriers have performed

a useful public service and that they have a definite place and role in meeting the Nation's air transportation requirements. The subject legislation, therefore, is designed to amend the Federal Aviation Act of 1958 in various respects in order that the Board can legally award certificates for supplemental air transportation to those carriers who would be eligible for such authority under the proposed legislation.

The amendments proposed in H.R. 7512 to the Federal Aviation Act of 1958 are all amendments of a technical nature designed to give the Board appropriate legal authority to issue certificates to carriers for supplemental air transportation. These proposed technical amendments include a so-called "grandfather" provision which would authorize the issuance of a certificate for supplemental air transportation to those carriers who were previously authorized to engage in such transportation (see line 5 and following on p. 3 of H.R. 7512).

The continued existence of the irregular air carrier fleet is of real value in terms of national defense and it is evident that the future ability of the irregular air carriers to service the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In this regard, the current (April 1, 1961) allocation of aircraft to the civil reserve air fleet (CRAF) program shows that there are 8 supplemental air carriers participating in this program which now includes 22 air carriers.

The Department of the Air Force, on behalf of the Department of Defense, has no objection to the enactment of

H.R. 7512, but defers to the views of the Civil Aeronautics Board concerning the technical details of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,
Assistant Secretary of the Air Force.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., June 20, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We reply to your request for reports on H.R. 7318 and H.R. 7512 proposing to authorize the Civil Aeronautics Board to issue certificates of public convenience and necessity to "supplemental air carriers."

Each of these bills would amend the Federal Aviation Act by authorizing the Civil Aeronautics Board to issue certificates of public convenience and necessity to "supplemental air carriers." The bills differ, however, in the specific type of service which could be authorized by the Board in the certificates granted to "supplemental air carriers." H.R. 7512 does not include authorization for the transpor-

tation of mail. H.R. 7318, on the other hand, would permit the Civil Aeronautics Board to grant "supplemental air carriers" authority to transport mail.

To date the supplemental air carrier operations authorized by the Civil Aeronautics Board have not included any grant of authority to transport mail. Nor has the Department ever supported any such grant of mail authority in view of the very limited special type of operation that is characteristic of a supplemental air carrier service. No use would be made of this type of limited operation for the transportation of mail except under very extraordinary circumstances.

We have no objection to the enactment of this legislation; however, the use of "supplemental air carriers" as provided for in H.R. 7318 would be feasible for mail transportation only under extraordinary circumstances since they would not be operating a daily point-to-point type of service.

We have been advised by the Bureau of the Budget that from the standpoint of the administration's program there is no objection to the presentation of the report to the committee.

Sincerely yours,

J. EDWARD DAY, *Postmaster General.*

Senate Report No. 688
87th Congress, 1st Session

AMENDMENTS TO THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR A CLASS OF SUPPLEMENTAL AIR CARRIERS

AUGUST 8, 1961.—Ordered to be printed

Mr. MONRONEY, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1969]

The Committee on Commerce, to whom was referred the bill (S. 1969) to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment, in the nature of substitute, is as follows:

Strike out all after the enacting clause and insert the following:

That (a) section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (13) through (31) as (14) through (32) and inserting therein a new paragraph to read as follows:

---

* Numbers within dashes, used on the right, are the original page numbers of the document. These are the numbers referred to in Petitioners' Brief.

"(13) 'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

(b) Section 101 of the Federal Aviation Act, as amended, is further amended by redesignating paragraphs (32) and (33) as (35) and (36), respectively, and inserting therein two new paragraphs to read as follows:

"(33) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(34) 'Supplemental air transportation' means charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read as follows:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate, to any applicant not holding a certificate under paragraphs (1) or (2) of this subsection, authorizing the whole or any part of the transportation covered by the application, and for such period, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board thereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to the type of supplemental air transportation for which authority is sought, including the nature of the public need therefor and the extent to which the applicant will be required to provide such air transportation.

"(ii) Any certificate issued pursuant to this paragraph authorizing individually ticketed or waybilled service shall contain such limitations, including the term thereof, as the Board finds are required to insure that such service will not result in significant diversion of traffic from any air carrier authorized to render service between the same points by a certificate or certificates of public convenience and necessity issued pursuant to paragraphs (1) and (2) of this subsection."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended to read as follows:

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall, with respect to charter service, designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public

shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3)(ii) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter service of any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board."

SEC. 4. Clause (3) of section 406(b) of the Federal Aviation Act is amended by inserting after "each such air carrier" the words "(other than a supplemental air carrier)".

SEC. 5. Title IV of the Federal Aviation Act is amended by adding at the end thereof a new section to read as follows:

"SPECIAL OPERATING AUTHORIZATIONS

"Authority of Board To Issue

"SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

"(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental carrier a special operating authorization to engage in air transportation between such points.

"Terms of Authorization

"(b) A specal operating authorization issued hereunder shall—

"(1) contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which would otherwise exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) be valid for not more than thirty days and extended not more than twice; and

"(3) not be deemed a license within the meaning of the Administrative Procedure Act (5 U.S.C. 1001, et seq., as amended).

"Procedure

"(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved."

SEC. 6. Section 901(a) of the Federal Aviation Act of 1958 is amended to read as follows:

"CIVIL PENALTIES

"Safety, Economic, and Postal Offenses

"SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or

order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided,* That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

"(2) Any such civil penalty may be compromised by the Administrator in the case of violations of title III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of title IV and VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged."

SEC. 7. (a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744 of November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that between January 1, 1960, and May 25, 1961, the applicant or his predecessor in interest lawfully performed either (A) any portion of the service authorized by the certificate or interim operating authority, or (B) any operations for the Military Establishment of the United States;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act: *Provided,* That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred with Board approval pursuant to section

401(h) of the Federal Aviation Act: *Provided,* That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall extend the authority hereunder if it approves the transfer pursuant to section 401(h) of such Act;

the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto pending issuance or denial of a certificate pursuant to section 401(d)(3) of such Act authorizing the whole or any part of the transportation covered by the application.

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act for a certificate for supplemental air transportation within 30 days after the date of enactment of this Act shall show that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's interim authority and subject to the terms, conditions, and limitations attached thereto pending issuance or denial of a certificate

pursuant to section 401(d)(3) of such Act authorizing the whole or any part of the transportation covered by the application.

SEC. 8. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), it may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act within said thirty days, until the Board has granted or denied interim authority under section 7 of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority for thirty days from the date of enactment of the Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act within said thirty days, until the Board has granted or denied interim authority under section 7 of this Act. The

certificates of public convenience and necessity issued by the Board pursuant to Order E-13436 adopted January 28, 1959, and Order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74

—5—

Stat. 527), and the exemption authority issued by the Board under Order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate on the date of an order of the Board granting or denying interim authority under section 7 of this Act, or if the carrier files no application under section 401(d)(3) within 30 days from the date of enactment of this Act, at the end of said 30-day period. Any carrier whose operating authority in interstate air transportation under Board Order E-9744 is continuing solely by virtue of a judicial stay of a Board Order which would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in Order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Order E-13436 or Order E-14196 or against the holder of interim authority issued under section a(1) of Public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or

this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier for violations occurring prior to the extension of its authority under section 7 or the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under section 401(d)(3) of the Federal Aviation Act may be imposed upon such extension of authority or certificate issued to such air carrier.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of upon the date of enactment of this Act.

Amend the title so as to read:

A bill to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes.

SUMMARY OF THE BILL

The present measure would make it clear that a carrier may request and be authorized to perform limited services supplemental to those furnished by the regular air carriers and would authorize the Board to issue certificates of public convenience and necessity for supplemental service

containing limitations on the type and extent of service authorized. This authority was requested by the Civil Aeronautics Board as a result of the decision of the U.S. Court of Appeals for the District of Columbia in *United Airlines et al.* v. *Civil Aeronautics Board,* which determined that the Board lacked authority under existing law to issue limited certificates.

The bill would (1) grant statutory interim operating rights, in the nature of temporary "grandfather" rights, to existing holders of supplemental air carrier certificates who have performed a portion of the service authorized by their present certificates, (2) make clear that a supplemental certificate is primarily a certificate for charter service and provide that the Board may, when the public convenience and necessity requires, also authorize individually ticketed service, (3) make clear that supplemental air carriers are not eligible for subsidy payments, (4) permit the Board to issue a special operating authorization for temporary service between particular points during periods when regular service is inadequate, (5) permit the Board to impose civil penalties for violations of title IV of the act relating to economic regulations, (6) amend the act to provide for a statutory definition of charter service,

—6—

(7) make clear that a regularly certificated carrier cannot also be certificated as a supplemental carrier, and (8) enable the Board to make a determination of fitness based upon considerations peculiar to the type of supplemental transportation for which authority is sought.

Senate Report No. 688

HEARINGS

Your committee conducted hearings over a period of 3 days and received testimony from the following witnesses: Senators John Sparkman and Howard W. Cannon; Alan Boyd, Chairman, Civil Aeronautics Board; Robert Fraley, Quaker City Airways, Philadelphia, Pa.; and Mantz Air Services, Burbank, Calif.; Jesse Stallings, president, Capitol Airways, Nashville, Tenn.; Dr. Ralph Cox, Jr., president, U.S. Overseas Airlines, Wildwood, N.J.; George Patterson, president and general manager, President Airlines, Inc., Burbank, Calif.; Reed Pigman, president, American Flyers, Fort Worth, Tex.; Alfred Blatz, president, Blatz Airlines, Burbank, Calif.; Angus McDonald, assistant director, National Farmers Union, Washington, D.C.; Stuart Tipton, Air Transport Association, Washington, D.C.; James Anton, Quaker City Airways; Clayton L. Burwell, president, Independent Airlines; Robert E. Commerce, president, Airline Dispatchers Association; and Robert C. Goodman, Saturn Airways. With the exception of the Air Transport Association and the Airline Dispatchers Association, all witnesses strongly supported the objectives of the bill.

SECTION-BY-SECTION ANALYSIS

Section 1

This section would amend section 101 of the Federal Aviation Act to include additional statutory definitions. "Charter service" would be defined as air transportation where the entire capacity of one or more aircraft has been

engaged on a time, mileage, or trip basis, but specifically excluding transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides, or offers to provide, transportation services to individual members of the general public other than as a member of a group on an all-expense-paid tour. This definition would be applicable to all certificated air carriers including both route carriers and supplemental carriers.

"Supplemental air carrier" would be defined as an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"Supplemental air transportation" would be defined as charter service and other air transportation rendered pursuant to a supplemental certificate.

Section 2

Subsection 401(d) of the act would be amended by adding a new paragraph which would authorize the Board to issue a certificate to engage in air transportation as a supplemental air carrier to any applicant other than certificated route carriers. The Board could authorize the whole or any part of the transportation covered by the application, and authorize it for such periods, as the public convenience and necessity may require, provided

the applicant is found to be fit, willing, and able to properly perform such transportation. This provision would permit the Board to make a finding of fitness on the basis of the type of supplemental transportation for which authority is sought. The Board would be permitted to authorize

individually ticketed or waybilled services but would be required to include in the certificate such terms and limitations as it finds are necessary to insure that such services will not result in significant diversion of traffic from the certificated route carriers authorized to render service between the same points.

Section 3

Section 401(e) of the act would be amended to permit the Board, in issuing certificates for supplemental air transportation for charter service, to designate terminal or intermediate points only insofar as the Board deems practicable and otherwise permits the Board to designate only the geographical area, or areas, within or between which service may be rendered.

Individually ticketed operations would be permitted only between designated points.

The Board would be permitted to impose terms, conditions, or limitations as to frequency of schedules and as to equipment in a supplemental certificate to insure that such individually ticketed service is supplemental to the service being provided by the certificated route carriers. Such limitations are prohibited in certificates issued to route carriers. This section would continue the present authority of a certificated route carrier to perform charter service under regulations prescribed by the Board.

Section 4

Section 406(b) of the act would be amended to specifically exclude supplemental air carriers from eligibility for subsidy.

Section 5

A new section 417 would be added at the end of title IV of the Act to permit the Board to issue "special operating authorizations" to supplemental air carriers. Such authorizations would be limited to periods when the capacity of the certificated route carriers was insufficient to meet the requirements of the public or the postal service. Certificated route carriers would not be eligible to receive such authorizations. Specifically, the Board could issue this special operating authorization upon a finding that (1) the service of a certificated route carrier is temporarily insufficient to meet the requirements of the public or the postal service, (2) there is a temporary requirement for transportation between two points, one or both of which is not regularly served by any air carrier, and (3) any supplemental air carrier can supply the additional service temporarily required in the public interest.

Such authorizations must contain limitations as to frequency and types of equipment so as to assure that the service authorized will alleviate insufficiencies which would otherwise exist without significant diversion of traffic from certificated route carriers. The authorization would be limited to 30 days. However, the Board would be permitted to extend it, but not more than twice. The authorizations would not be deemed licenses within the meaning of the Administrative Procedures Act.

The Board would be required to establish procedures for the expeditious investigation and determination of requests for such authorizations. The bill would require written notice to air carriers certificated to provide service between

the points involved and afford such carriers the opportunity to protest the application in writing. This section contemplates that procedures will be adopted so as to avoid undue delay in the issuance of special operating authorizations and that the Board shall take into account in investigating such applications the degree of emergency involved.

Section 6

Section 901(a) would be amended to give the Board jurisdiction to impose the same civil penalties for violations of the economic provisions of the act as are now provided for violations of other provisions of the act. This jurisdiction would extend to all of the provisions of title IV and would include violations by the certificated route carriers as well as those committed by the supplemental air carriers and other persons.

Section 7

This section would require the Board to issue interim operating authority in the nature of temporary grandfather rights to any applicant who, within 30 days following enactment of this legislation, applies for a supplemental certificate and shows: (1) That it has been authorized to engage in supplemental air transportation, by certificate, interim operating authority, or exemption; (2) that it has operated under the authority or performed transportation for the Military Establishment; and (3) that this authority has not been terminated or expired. Upon proof of these facts, the Board would be required to issue interim authority of the applicant to engage in supplemental air trans-

portation to the same extent authorized in the applicant's present certificate or authority until the Board disposes of its applications under section 401(d)(3)—the new provision for supplemental certificates effective upon enactment of this bill.

This section also contains a provision which would enable a carrier who received interim operating authority under Public Law 86-661 to qualify automatically for the grandfather interim authority.

Section 8

This section would permit any supplemental carrier who previously received a certificate or interim operating authority under Public Law 86-661, to continue its operations under existing authority for 30 days after enactment of the bill, and, if it has filed an application under section 401(d)(3) for a supplemental certificate within said 30 days, to continue to operate until the Board passes upon its request for the interim authority provided for in section 7 of the bill.

This section also has a similar provision for those carriers who were not certificated but were still authorized to conduct interstate air transportation as a supplemental carrier pursuant to the Board's original exemption order, and who (1) had an application pending before the Board for a certificate on July 14, 1960, and (2) filed an application for a certificate under section 401(d)(3) within 30 days after enactment of the bill. This latter provision is designated to continue the operations of only those supplemental carriers who received authority under Order E-9744 whose ap-

plications for a certificate in Docket 5132 have not yet been finally disposed of by the Board.

Section 8(a) also contains a provision which would cancel *(a)* the certificate previously issued to the supplemental carriers by Order E-13436 and Order E-14196, *(b)* any interim operating authority issued under Public Law 86-661, and *(c)* the exemption authority issued under Order E-9744 or prior orders. Such authorizations would terminate on the date of an order of the Board granting or denying grandfather rights—i.e., the interim authority provided for in section 7. If the carrier did not file an application under section 401(d)(3) within 30 days after enactment of the bill, such authorization would terminate 30 days after enactment.

In addition, a provision is included to permit the continuation of those supplemental carriers operating under Order E-9744 which are operating solely by virtue of a judicial stay of a Board Order revoking their authority. Their operations would continue until the court lifts such stay or until final disposition of judicial review, whichever occurs first.

Section 8(b) would preserve the Board's power to institute enforcement proceedings for violations which occurred before enactment of the bill. It would also permit the Board to impose sanctions for past violations, either upon the interim extensions of authority issued under section 7 or upon new certificates issued pursuant to section 401 (d)(3).

Section 8(c) would clear the Board's docket of applications filed in docket 5132 by declaring that they shall be deemed to have been finally disposed of upon the date of enactment of the bill.

Senate Report No. 688

BACKGROUND

The origin of the supplemental air carrier industry traces back to the period shortly following the enactment of the Civil Aeronautics Act of 1938. It was during this period that the Board issued an exemption order authorizing nonscheduled operations. Initially, and up until the end of World War II, nonscheduled operations were generally conducted with aircraft of smaller size than those utilized by the certificated route carriers. Following the end of World War II surplus transport-type aircraft became available and were acquired in significant numbers by the nonscheduled operators. With larger aircraft of increased capacity their cargo and passenger operations substantially expanded. As a result, the Board, in 1947, revised its exemption regulations to require letters of registration as condition precedent to operations and to distinguish between operators of transport-type aircraft and operators of small aircraft, which were termed, respectively, "large irregulars" and "small irregulars."

The large irregular carriers were precluded from operating "regularly or with a reasonable degree of regularity." Under criteria and regulations prescribed by the Board, the carriers could operate between 8 and 12 flights per month between the same 2 points. Charter, individually ticketed, and waybilled flights were all counted in determining whether operations between the same two points were excessive. Operations were permitted in interstate, oversea, and foreign air transportation for the carriage of property and in other than foreign air transportation for the carriage of persons.

Subsequent changes in the regulations proved inadequate to meet the various problems confronting the Board in its effort to satisfactorily determine the appropriate role of the nonscheduled carriers. As a result, in 1951 the Board instituted the large irregular air carrier investigation, Docket 5132, to determine:

(1) Their role in the air transportation system and the extent of the operations which should be permitted;

(2) The carriers which were to receive authority; and

(3) Whether the authorization should be by certificate or exemption.

After protracted hearings, with some 30 applicants still to be heard, the Board in 1954 determined it was necessary to expedite the proceeding by first deciding the issue as to the role of the carriers and the scope of their operations, leaving for future decision the remaining two issues. As a result, on November 15, 1955, in Order E-9744, the Board found that irregular carriers comprise a "separate class of carriers" performing varied and flexible services, and being "unhampered and unrestricted by schedule and route requirement * * * make themselves available to serve whenever and wherever the demand exists." The Board further found that their operations would not adversely affect the regular route carriers and that unlimited charter authority should be granted, together with individually ticketed authority not to exceed 10 flights per month in the same direction between any two points. The 10-flight limitation was derived from an average of the 8 to 12 flights permitted

under the prior regulations. Its purpose was to remove uncertainties as to the extent and scope of operations permitted, with the resulting and obvious benefits to the carriers and the Board in administration and enforcement.

The Board decided to grant new authority to all members of the class on an interim exemption basis pending its final decision as to the qualifications of individual carriers and as to whether the final authorization should be by certificate or exemption.

The order granting interim exemption authority was set aside by the Court of Appeals for the District of Columbia Circuit on July 19, 1956, on the ground that the Board had not made sufficient subsidiary finding to sustain the statutory finding required for exemption that a requirement for certification would be an undue burden on the carriers. A petition for writ of certiorari was denied by the Supreme Court. On December 21, 1956, the court of appeals stayed the issuance of its mandate until 60 days after the date of final Board decision in Docket 5132.

On January 28, 1959, in Order E-14196 the Board granted temporary certificates of public convenience and necessity for supplemental air service to 23 carriers found by the Board fit to receive them. Subsequently, on July 8, 1959, in Order E-14196, the Board issued two additional certificates. These 25 certificates authorized the supplemental carriers to render unlimited planeload charter service and to conduct, without specified terminal or intermediate points, individually ticketed flights not to exceed 10 between the same 2 points during any month. Authority was limited to operations conducted in interstate air transportation. Applications of five other carriers remained to be decided pending further consideration of their qualifications.

The Board's decision was contested and the U.S. Court of Appeals for the District of Columbia found, in *United Air Lines et al.* v. *Civil Aeronautics Board,* that the order of January 28, 1959, was legally deficient in three respects:

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides:

"No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules * * *"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out—one judge dissenting—the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

In view of the fact that it was the same court which, on July 19, 1956, had invalidated the Board's efforts to authorize supplemental air transportation by means of an exemption order, it became a serious question whether supplemental carriers could operate under either exemption or certificate of authority. Consequently, the Board, on April 28, 1960, submitted to Congress proposed legislation (S. 1543 and H.R. 7593) to provide the authority which the court found the Board lacked.

Your committee favorably reported S. 1543, with amendments, on June 13, 1960. However, the House Interstate and Foreign Commerce Committee in its report (No. 1877) of June 15, 1960, stated that it did not have sufficient time to adequately study the entire question of supplemental air transportation, and recommended enactment of temporary legislation to maintain the status quo for 1 year since without immediate action by Congress, the supplemental carriers might not be able to continue operating. Thereafter, Congress enacted Public Law 86-661, approved July 14, 1960, granting temporary operating authority to the supplementals until March 14, 1962.

BASIC CONCEPTS

The Civil Aeronautics Board has always treated the supplemental carriers as a class, each member of which was given substantially identical authority—the right to provide charter service and to perform no more than 10 scheduled trips a month between any two points. As a matter of fact, the type of operations conducted by these carriers

has been almost as varied as the number of carriers. Many have performed charter operations for the Military Estab-

lishment. Others have derived almost their total revenue from civil charter. A few have conducted fairly balanced operations, deriving substantial revenues from military charter, civil charter, and scheduled passenger service.

There is also great variation in the capability of these carriers, in their financial resources and in the number and types of aircraft which they own and operate. Many have operated continuously and grown steadily. Others have operated only sporadically or on a very limited scale. To some extent, these variations reflect the differences in interest, experience, and managerial skill of their owners.

The committee is aware that to some extent these carriers must be treated as a class. All of them are certificated to provide transportation to supplement the existing air transportation system, which will be based in the future as it has been in the past on scheduled route carriers. Under the committee bill, many aspects of this class characteristic are retained. None of these carriers will be eligible for subsidy. None of them will be permitted to provide scheduled service except subject to limitations of a type which could not be imposed by the Board on scheduled route carriers. All of them will probably depend for a substantial part of their revenue on charter operations. They have had and will continue to have problems and perform services distinct from the scheduled route carriers.

However, the committee has carefully analyzed the reports of all of these carriers to the Board over the past few years. It is impressed by their variety and is convinced that they will achieve a permanent and stable place in our air transportation system only when the Board begins to issue individual certificates more specifically de-

signed for the individual carrier. It is only by this means that the Board can insure that each piece which it fits into the mosaic of the supplemental industry will properly contribute to the final total picture.

In deciding what authority should be given each carrier the Board should certainly start with what the carrier wants to do; what its experience has been; what its capability is in terms of financing, personnel, and equipment. A supplemental industry constructed on this basis requires courage and imagination on the part of the carriers in developing and proposing how they can best serve the public interest. It requires on the part of the Board a sense of liberality and experimentation and a willingness to undertake a trial, even at the cost of occasional error.

CHARTER SERVICE

Every witness who discussed the subject in the hearings on this measure agreed that the basic role of the supplemental carriers is the provision of charter service. Even the spokesman for the Air Transport Association, representing the scheduled route carriers, while strongly opposing any authority for the supplemental carriers to perform scheduled service, supported the supplemental carriers being given charter authority. The supplemental carriers themselves were unanimous in their view that charter service represented both their greatest potential contribution to air transportation and their greatest potential source of revenue. A substantial part of their revenues in

the past have come either from civil charter or charter service performed under contracts with the Military Establishment of the United States.

Senate Report No. 688

The keystone of the committee bill is the concept that the authority to provide charter service should be the basic ingredient of a certificate as a supplemental air carrier. The committee has defined "supplemental air transportation" to mean—

> charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) * * *.

The committee has also defined "charter service" as being "air transportation" which under section 401 of the Federal Aviation Act no air carrier can perform except pursuant to a certificate issued by the Board.

Because the committee is convinced that individual certificates as a supplemental air carrier must be tailored to the public need and to the capability and interests of the particular carrier, the bill does not require the Board to grant every supplemental carrier any particular charter authority. The Board is specifically authorized to designate the geographical area or areas within or between which charter service may be rendered. The charter authority of one carrier may be quite different from that provided to another, but charter authority remains in the view of the committee the basic, if not absolutely indispensable, ingredient of the supplemental certificate. It is the type of service which most clearly supplements the scheduled route service provided by other carriers.

The committee is also strongly of the opinion that the Board's practice of routinely permitting continual large-

scale charter operations by exemption is not only unwise, but illegal, because not within the "unusual circumstances" contemplated by section 416. The committee hopes that henceforth charter service will be provided by the certificated carriers authorized to provide it and not provided under an exemption by anyone who professes a desire to do so.

A charter, by common law and general practice in the transportation industry, means essentially the lease of the entire vehicle, in this case the aircraft, for a period of time or for a particular trip. Because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter, particularly in international air transportation, the committee has incorporated the common law definition of charter in the statutory definitions contained in the Federal Aviation Act. The bill thus provides that—

> "charter service" means air transportation * * * where the entire capacity of one or more aircraft has been engaged * * * on a time, mileage or trip basis * * *.

However, it is not the intention of the committee to permit individually ticketed service to be offered to the general public under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individually ticketed service whether offered by an air carrier directly or by a travel agent.

This restriction is subject to one exception because there is one circumstance in which a carrier or travel agent may

offer the services to individual members of the public and still conform to the traditional concept of charter. This is

in connection with an all-expense-paid group tour. If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, this is a very different sort of service from individually ticketed transportation.

The proposed statutory definition incorporates this exception by providing that charter shall not include transportation offered to individual members of the general public "other than as a member of a group on an all-expense-paid tour." The committee has received representations that this exception is open to the abuse that it might be used as a guise to offer individually ticketed service. However, the Civil Aeronautics Board has ample authority, because of its power to specify the terms, conditions, and limitations of the certificate under section 401 and its general power to make any necessary rules or regulations to carry out the provisions of the act under section 204. to prevent any violation of the clear intent of the statute. This the Board can accomplish by specifying in its regulations the minimum requirements which must be met before the service offered qualifies under the statutory exception.

However, several members of your committee have expressed the desire that the Board submit reports setting forth its experiences in administering the provision pertaining to all-expense-paid tours. Accordingly, your committee requests the Board to report annually on this subject for the next 3 years, either in a separate report or in its annual report to the Congress. If the Board's experience in administering this section should demonstrate that additional statutory authority is necessary, your committee

will expect the Board to incorporate appropriate recommendations to that end in its report.

INDIVIDUALLY TICKETED SERVICE

A far more controversial aspect of the present authority of supplemental carriers is their right to sell individual tickets for scheduled service subject to the limitation that not more than 10 trips per month be performed between any two points. The scheduled route carriers have expressed grave apprehension over this authority.

One of the principal reasons which the court assigned in its opinion in *United Airlines* v. *C.A.B.* for invalidating the Board's action in granting supplemental certificates was that they permitted operations between points selected by the carrier and did not specify the terminal points between which the carrier was authorized to engage in air transportation as required by section 401(e) of the act. The limitation on the number of trips, in lieu of specifying the terminal points, was likewise held by the court to violate the provision of that subsection prohibiting the Board from placing a limitation in a certificate restricting the right of an air carrier to add to or change schedules. The bill originally submitted by the Board had as its primary purpose amendment of the act to permit the Board to grant just this kind of a certificate to supplemental air carriers, that is, authority to provide a limited number of trips between any two points without specifying them.

The committee has determined that the act should not be amended to permit the Board to issue a certificate authoriz-

ing scheduled service without specifying the terminals, although it has relieved the Board of this necessity with

reference to certificates authorizing charter service. The committee recommends this position for two reasons. First, the points between which there is a demonstrable need and a ready market for supplemental air transportation are sufficiently limited that it appears perfectly feasible for the Board to specify these terminals in the certificate. Second, only by specifying where such service will be provided and which supplemental carriers shall furnish it can the Board insure that a large number of carriers will not elect to furnish service between the same points with possible serious effect upon the scheduled route carriers certificated to render service between such points.

The committee has provided the Board with authority to limit the number of schedules or the type of equipment employed by a supplemental air carrier, adopting in this regard the amendment offered by Senator Morris Cotton. The proposed new paragraph 3 of subsection 401(d) is thus amended to provide that any supplemental certificate which authorizes individually ticketed service shall contain such limitations, including limitations as to the term of the certificate, as the Board finds are required to insure that the service will not result in significant diversion of traffic from any scheduled route carrier certificated to serve between the same points. Section 401(e) is amended to permit the Board to impose such terms and conditions in a supplemental certificate as are required by the foregoing provision.

Both the Civil Aeronautics Board and the supplemental air carriers made strong representations to the committee in the hearing that such limited scheduled service to supplement that provided by the regular carriers served a

real public need, was essential to the continued survival of the supplemental industry, and had resulted in no demonstrable injury to the scheduled carriers. It is the committees considered view that the Board should be empowered to provide this type of operating authority and that the limitations contained in the committee amendment as described above insure that such operations will in fact supplement and not undermine the scheduled air transportation system.

TEMPORARY REQUIREMENT FOR SUPPLEMENTAL SERVICE

The committee concluded as a result of its hearings that neither the type of certificates heretofore issued to the supplemental carriers nor the more specialized certificates contemplated under the committee bill were well adapted to provide supplemental air transportation to meet a temporary need for additional service, such as that which frequently occurs between major traffic points during holiday seasons. Neither were they well adapted to meet the need for temporary service to points, such as resort areas, not regularly served by any air carrier but which might require service for a brief period during a particular season of the year.

Therefore, in section 5 of the bill the committee proposes the addition of a new section 417 of the Federal Aviation Act providing for "special operating authorizations" to meet these situations. That section would provide that if the Board finds that the air transport capacity being offered between particular points is or will be temporarily insufficient to meet the needs of the public or the postal

service, or that there is a temporary requirement for air

transportation between two points one or both of which is not regularly served by any air carrier, it may issue such special operating authorization to a supplemental air carrier to provide service between those points.

The new section would require that such an authorization contain limitations as to the amount of service or the type of equipment used to assure that it will eliminate the shortage without significant diversion of traffic from the carriers holding certificates for the route. The section provides that such authorization shall be for not more than 30 days, but can be extended for like periods not more than twice.

It is the committee's intention that the Board should take steps to keep itself informed as to the need for such temporary additional service. The committee believes that it is practical for the Board to maintain representatives at key traffic centers during some or all of each year whose responsibility it would be to advise the Board of any actual or anticipated shortage of capacity so that the Board could immediately issue the necessary authorization to provide temporary additional service.

The Board is directed to establish a procedure for expeditiously handling these situations. It is required to give written notice to the air carriers certificated to provide service between the points involved and to provide an opportunity for such carrier to protest the issuance of such operating authorization in writing. Whether the carrier would be heard orally in support of the protest would be a matter for the Board's discretion, taking into account the degree of emergency involved in meeting the shortage.

The committee believes that a conscientious effort to make maximum use of this section will provide the Board with greater flexibility in meeting seasonal traffic peaks than it has ever had heretofore, and that it will also provide the supplemental air carriers with an effective means of providing a needed public service to supplement the existing air transportation system. The committee believes that there is no provision of the bill which, if properly used, would contribute more directly to providing the public with more convenient and adequate air transportation.

THE ENFORCEMENT PROBLEM

One cause for apprehension as to the possible adverse impact on the scheduled industry of the supplemental carriers, which was reflected in the committee's hearings, was the difficulties which have been encountered by the Board in effectively enforcing the limitations on supplemental operations which it has imposed in past orders. There have been rather notorious examples of supplemental carriers entering into illegal combinations resulting in a de facto pooling of their operating rights to provide scheduled service of far greater frequency and regularity than had been authorized by the Board. Efforts of the Board to end such practices by cease-and-desist orders or revocations of authority have been frustrated by protracted appeals to the court during which the Board's orders have been stayed. This has permitted the continuation of palpably illegal but highly profitable operations by carriers using every conceivable means to delay the inevitable legal sanction.

Such operations have never been conducted by more than a handful of supplemental carriers. The vast number of

such carriers have probably suffered more from such activities than have the scheduled carriers, for they have found it impossible to compete on a legal basis, offering a severely limited number of trips, with carriers who have illegally combined to provide daily scheduled service. Unfortunately, they have probably suffered even more from the less tangible damage done by such operations to the reputation of the supplemental industry. It is implicit in the committee's action on this bill that it regards the vast majority of supplemental air carriers as responsible, safe, and useful operators who have made and will continue to make a major contribution to the development of air transportation, and particularly to national defense. The committee is determined that the supplemental industry, as well as the scheduled industry, be more effectively protected from the depredations of illegal operators.

In recommending the means to accomplish this end the committee has accepted the recommendations of the Civil Aeronautics Board, made continually over several years, that the civil penalties now provided in the Federal Aviation Act for violations of safety and other provisions of the act be made applicable to violation of the economic provisions under title IV and of certificates issued thereunder. Section 901 of the act now provides a civil penalty not to exceed $1,000 for each violation and provides that in the case of a continuing violation each day shall constitute a separate offense subject to the $1,000 penalty. The committee bill would amend this section to make it applicable to the provisions of title IV and certificates issued

thereunder, and would thus provide the Board with the weapon it has lacked—the ability to take the profit out of illegal operations performed over a long period of time under a judicial stay.

THE GRANDFATHER PROVISIONS

The grandfather provisions as amended by the committee are designed to permit the existing supplemental carriers to operate until such time as the Board can issue new certificates conforming to the principles heretofore discussed. The committee regrets that the grandfather provisions cannot be more simply stated than they are in sections 7 and 8 of the bill. Their complexity is the result of an unbelievable hodge-podge of exemptions, orders, and stays which have marked the Board's activity in connection with the supplemental air carriers. The committee believes that the provisions of sections 7 and 8 will have the effect of clearing the accumulated debris without injustice to the carriers that have been more its victims than its beneficiaries.

Section 8 of the bill requires any carrier desiring to continue to operate in the future as a supplemental air carrier to file a new application under section 401(d)(3) seeking such certificate within 30 days from the time of enactment of the bill. If no application for a new certificate is filed within that period, the carrier's present authority will terminate, whether derived from an exemption, a certificate, or interim operating authority under Public Law 86-661. Any carrier which files an application for a certificate within 30 days is permitted to continue to operate under its present authority until the Board acts under section 7

of the bill. When the Board acts under section 7, the existing authority of a carrier will terminate, whether that authority is derived from a certificate, an exemption, or interim operating authority under Public Law 86-661.

—18—

If a carrier files a new application for a certificate as a supplemental air carrier under section 401(d)(3) within 30 days after enactment of this bill, the Board will next consider whether such carrier should be issued new interim authority to engage in supplemental air transportation pending Board action on the certificate application. The committee is aware that the issuance of new interim authority identical to that which the carriers now hold, rather than an extension of their present certificate or exemption, may appear to be an unnecessary step. Only those who have been forced to wind their way through the Chinese maze of orders and exemptions can appreciate how directly the public interest would be served by the issuance of a new single order clearly specifying what carriers are permitted to conduct what operations pending action on their certificate applications.

The Board is directed to issue new interim authority to four categories of carriers. The first category consists of a single carrier, Vance Roberts, which was given operating authority by the Board pursuant to section 1(2) of Public Law 86-661. Since the Board has just acted on this application within the last few months, the bill requires the automatic issuance by the Board of new interim operating authority without any further showing by the carrier.

The remaining three categories of carriers holding some form of operating authority from the Board must satisfy certain specific requirements before the Board is required

to issue new interim operating authority to them. These requirements have been included in section 7 by the committee to insure that the effect of the grandfather provisions is to avoid hardship by permitting legally operating carriers to continue to operate, and not to revive dormant carriers which have not operated. A carrier which is not now operating will have the same right as a new applicant to apply for and receive a certificate as a supplemental air carrier. Justice does not require that such a carrier be permitted to begin operations prior to the time that the Board has passed on its application for a certificate.

A carrier in one of these three categories must be able to show that between January 1, 1960, and May 25, 1961 (the date of introduction of the bill), it performed any portion of the service authorized by its certificate or other operating authority or operations for the Military Establishment; that such certificate or operating authority has not been revoked or otherwise terminated by the Board; and that the certificate or operating authority is held by the original grantee or has been transferred with the Board's approval. Special provision is made for an application for transfer which may be pending at the time of enactment of the bill. The following, then, are the three categories of carriers which may be entitled to receive new operating authority under section 7. The categories are mutually exclusive. A carrier is in one category, and one only, or in none.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-13436, of January 28, 1959. Special circumstances relating to such carriers

are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

—19—

CARRIERS	COMMENT
American Flyers Airline Corp.	
Arctic-Pacific, Inc.	Certificate expired May 30, 1961; no application for renewal was filed. Authority terminated by Board Order E-16734 of April 28, 1961.
Associated Air Transport, Inc.	
Aviation Corp. of Seattle, d/b/a Westair Transport	Application for transfer and renewal of certificate pending.
Blatz Airlines, Inc.	
Capitol Airways, Inc.	
Coastal Air Lines (formerly Coastal Cargo Co., Inc.)	
Conner Air Lines, Inc.	No transport operations performed in supplemental air service during test period.
General Airways, Inc.	Certificate sold by trustee in bankruptcy but no application for transfer to the purchaser has been filed.
Imperial Airlines, Inc. (formerly Regina Cargo Airlines, Inc.)	

CARRIERS	COMMENT
Johnson Flying Services, Inc.	
Paul Mantz Air Services	
Modern Air Transport, Inc.	
Overseas National Airways	
President Airlines, Inc. (formerly California Eastern Aviation, Inc.)	
Saturn Airways, Inc. (formerly All-American Airways, Inc.)	
Sourdough Air Transport	
Southern Air Transport, Inc.	
Standard Airways, Inc.	
Stewart Air Service	
Transocean Air Lines	
United States Overseas Airlines, Inc.	
World Airways, Inc.	

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to Order E-14196, of July 8, 1959. The committee is aware of no circumstance which would prevent their receiving interim operating authority.

Trans International Airlines, Inc. (formerly Los Angeles Air Service, Inc.)	
Quaker City Airways, Inc.	

Senate Report No. 688

The following carriers were given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744, of November 15, 1955, and have pending before the Board applications for a certificate as a supplemental air carrier which was filed prior to July 14, 1960. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

—20—

CARRIERS	COMMENT
Air Cargo Express, Inc.[1]	No transport operations performed in supplemental air service during test period.
Airline Transport Carriers, Inc., d/b/a California Hawaiian Airlines.	
Argonaut Airways Corp.....	
Meteor Air Transport, Inc.	Operating authority terminated by Order E-15183 of May 4, 1960.
Miami Airline, Inc.....	
S.S.W., Inc.....	Operating authority terminated by Order E-15252 of May 20, 1960.
World Wide Airlines, Inc.....	

[1] The certificate application of Air Cargo Express, Inc., was denied in Order E-13436, but the Board action reversed and the application remanded for further proceeding by the Court of Appeals for the District of Columbia in the case of *Great Lakes Airlines et al.* v. *C.A.B.*, decided Feb. 24, 1961.

There remains one additional category of carriers for which the bill makes special provision. Four carriers were given exemption authority for supplemental air service by Order E-9744, but have no applications for certificates pending before the Board because their operating authority under the exemption order was specifically terminated by the Board in Order E-13436. These carriers appealed the Board's order denying a certificate and revoking their exemption authority to the courts and are now operating under a judicial stay pending review. Certiorari has been denied by the Supreme Court, but a petition for reconsideration of this action is pending. Carriers in this category are Central Air Transport, Inc., Curry Air Transport, Ltd., Great Lakes Airlines, Inc., and Trans-Alaskan Airlines. Section 8 provides that these carriers are authorized to continue to operate subject to all conditions contained in Order E-9744 or imposed by the court until the court shall lift its stay or until final disposition of the judicial proceeding.

NEED FOR LEGISLATION

The Civil Aeronautics Board, after many years of deliberate consideration determined that the public interest required the unique and flexible services of supplemental air carriers (Order E-9744, November 15, 1955), and that certain carriers found fit to perform these services should be granted temporary certificates of public convenience and necessity (Order E-13436, January 28, 1959; E-14196, July 8, 1959). Although the court found certain provisions of the statute prevented the grant of the type of operating rights which the Board attempted to give to these carriers, it did not question the Board's judgment in determining

the issue of public need for their services. The court, in *United Airlines* v. *Civil Aeronautics Board* (278 F. 2d 446, Apr. 7, 1960) observed:

> If the requirements of section 401(e) interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there.

The Board, quite properly, has done just as court suggested. In testimony before your committee, both last year and this year the Board has reaffirmed its confidence in the soundness of the 1955 decision, and has strongly urged enactment of legislation to provide for the continued exist-

ence of the supplemental air carrier industry. Your committee shares the Board's view as to this need.

The supplemental carriers constitute an important element in national defense. During the Berlin airlift, while representing only 5 percent of the Nation's civilian air transport, these carriers moved approximately 25 percent of the passengers and 57 percent of the cargo carried by civilian aircraft supporting this strategic operation. They contributed materially during the Korean war, and were the first to airlift Hungarian refugees out of Vienna in 1956. They have supplied a substantial part of the airlift needs of the Arctic DEW line, and stood ready, after only a few hours of notice, with 38 four-engine aircraft to assist the military in the Lebanon crisis.

These carriers have been instrumental in expanding the horizon of air commerce. To a large extent they are responsible for the tremendous expansion in the charter field

which has taken place in the last few years. They pioneered the military contract business and the airfreight or all-cargo field. They were the first to develop aircoach travel and as a result opened a vast new field of air transportation by encouraging people to travel by air who had never done so previously.

Since its origin, the supplemental air carrier industry has existed in an atmosphere of uncertainty from one month to the next as to whether operating authority would continue. It has been an era of continued court challenges, protracted, costly, and tedious Government deliberations, anxiety and frustration. Your committee is unanimous in its conviction that the supplemental air carriers have a vital role to play in meeting the air transportation needs of this country. After considerable study your committee prepared an amendment in the nature of substitute to S. 1969, which it is convinced without exception, meets every reasonable objection to the original bill. The bill, as amended, will provide firm assurances as to operating authority with the resultant stability essential to the health of any industry, while at the same time incorporating adequate safeguards to protect the regularly certificated route carriers from unreasonable competition and traffic diversion.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

Senate Report No. 688

THE FEDERAL AVIATION ACT OF 1958

(72 Stat. 731)

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Agency.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided,* That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Administrator may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "Charter service" means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.

[(13)] *(14)* "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the

board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

[(14)] *(15)* "Civil aircraft" means any aircraft other than a public aircraft.

[(15)] *(16)* "Civil aircraft of the United States" means any aircraft registered as provided in this Act.

[(16)] *(17)* "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

[(17)] *(18)* "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

[(18)] *(19)* "Federal airway" means a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway.

[(19)] *(20)* "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

[(20)] *(21)* "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

[(21)] *(22)* "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce, between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

[(22)] *(23)* "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

[(23)] *(24)* "Mail" means United States mail and foreign-transit mail.

[(24)] *(25)* "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this Act, and shall include airspace needed to insure safety in take-off and landing of aircraft.

[(25)] *(26)* "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

[(26)] *(27)* "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this Act.

[(27)] *(28)* "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

[(28)] *(29)* "Propeller" includes all parts, appurtenances, and accessories thereof.

[(29)] *(30)* "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or

manifestly incompatible with the intent thereof, references

in this Act to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

[(30)] *(31)* "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

[(31)] *(32)* "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(33) *"Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.*

(34) *"Supplemental air transportation" means charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.*

[(32)] *(35)* "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide

employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] *(36)* "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

* * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

Application for Certificate

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

Notice of Application

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a

notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for a public hearing, and the Board shall dispose of such application as speedily as possible.

Issuance of Certificate

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate, to any applicant not holding a certificate under paragraphs (1) or (2) of this sub-

section, authorizing the whole or any part of the transportation covered by the application, and for such period, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to the type of supplemental air transportation for which authority is sought, including the nature of the public need therefor and the extent to which the applicant will be required to provide such air transportation.

(ii) Any certificate issued pursuant to this paragraph authorizing individually ticketed or waybilled service shall contain such limitations, including the term thereof, as the Board finds are required to insure that such service will not result in significant diversion of traffic from any air carrier authorized to render service between the same points by a certificate or certificates of public convenience and necessity issued pursuant to paragraphs (1) and (2) of this subsection.

Terms and Conditions of Certificate

[(e) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted

by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.]

(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted

by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) A certificate issued under this section to engage in supplemental air transportation shall, with respect to charter service, designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within or between which service may be rendered.

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3)(ii) of this section.

(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing

or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

(6) Any air carrier, other than a supplemental air carrier, may perform charter service or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.

—28—

Effective Date and Duration of Certificate

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased: *Provided,* That if any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Board, or if, for a period of ninety days or such other period as may be designated by the Board any such service is not operated, the Board may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

Senate Report No. 688

Authority to Modify, Suspend, or Revoke

(g) The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided,* That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

Transfer of Certificate

(h) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

Certain Rights Not Conferred by Certificate

(i) No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

Senate Report No. 688

Application for Abandonment

(j) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

Compliance With Labor Legislation

(k)(1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including takeoff and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

Requirement as to Carriage of Mail

(l) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

Application for New Mail Service

(m) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service

require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such addi-

tional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

SEC. 402. • • •

SEC. 403. • • •

SEC. 404. • • •

SEC. 405. • • •

RATES FOR TRANSPORTATION OF MAIL

Authority to Fix Rates

SEC. 406. (a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the

services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same.

Ratemaking Elements

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier *other than a supplemental air carrier* for compensation for the transportation of mail sufficient to insure the

performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

* * * * * *

—31—

SPECIAL OPERATING AUTHORIZATIONS

Authority of Board to issue

SEC. *417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—*

(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

(2) that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier; and

(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental carrier a special operating authorization to engage in air transportation between such points.

Senate Report No. 688

Terms of Authorization

(b) A special operating authorization issued hereunder shall—

(1) contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which would otherwise exist, without significant diversion of traffic from the holders of certificates for the route;

(2) be valid for not more than thirty days and extended not more than twice; and

(3) not be deemed a license within the meaning of the Administrative Procedure Act (5 U.S.C. 1001, et seq., as amended).

Procedure

(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.

Senate Report No. 688

TITLE IX—PENALTIES

CIVIL PENALTIES

[Safety and Postal Offenses

[SEC. 901. (a)(1) Any person who violates (A) any provision of titles III, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation: *Provided*, That this subsection shall not apply to members of the Armed Forces

of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

[(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of title VII, or any rule, regulation, or order issued thereunder, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.]

Senate Report No. 688

Safety, Economic, and Postal Offenses

SEC. *901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.*

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of title III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of titles IV and VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limita-

tion of any permit or certificate issued under title IV, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

Liens

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: *Provided,* That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

AGENCY COMMENTS

The following communications were received by Government agencies and considered by the committee:

CIVIL AERONAUTICS BOARD,
Washington, D.C., June 5, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of May 26, 1961, asking for a report on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. S. 1969 was drafted by the Board and introduced at its request as a part of the Board's current legislative program.

Senate Report No. 688

The purpose and need for the legislation are set forth in the enclosed statement which the Board prepared to accompany the draft legislation. The Board is prepared to appear and present testimony in further justification for the enactment of the proposed legislation, and urges that the bill be set down for hearing at an early date. The Board wholeheartedly endorses S. 1969 and recommends its enactment.

Sincerely yours,

ALAN S. BOYD, *Chairman.*

STATEMENT OF PURPOSE AND NEED FOR PROPOSED LEGISLATION

A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

The Board, on January 28, 1959, in the *Large Irregular Air Carrier Investigation,* docket 5132, issued temporary certificates of public convenience and necessity for supplemental air service to a number of air carriers found by the Board to be fit to receive them. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services. This authorization was limited to interstate air transportation. It was the latest step in the development of this industry which was originally known as large irregular air carriers.

Senate Report No. 688

A number of air carriers certificated to render route-type service petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the Board's order and opinion of January 28, 1959. On April 7, 1960, the court rendered its decision in *United Air Lines et al.* v. *Civil Aeronautics Board* (278 F. 2d 446), in which it found that the Board's action in certificating supplemental air carrier operations was legally deficient in three respects:

—34—

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules. • • •"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly author-

ized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

As a stopgap measure to avoid immediate cessation of the supplemental air carrier industry, the Congress enacted Public Law 86-661, approved July 14, 1960. Under this legislation the Board is given temporary authority to permit supplemental air carriers to conduct operations for 20 months. However, legislation of a more permanent nature is needed if there is to be any assurance that the supplemental air carrier industry is to continue in existence.

The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the irregular air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the irregular air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military.

The Board recommends changes in the law as follows:

1. The law should be made clear that a carrier may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers, and the Board should be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized.

2. The Board should be authorized to grant a blanket authorization without having to designate specific points.

3. The present stringent requirement of fitness should be reduced so that only general findings of fitness need be made for supplemental service.

4. Statutory operating rights should be granted to the existing holders of supplemental air carrier certificates in the nature of a "grandfather" provision, thus assuring the continuity of operations presently being conducted by the supplemental air carriers.

The draft bill attached has been prepared to carry out these recommendations.

—35—

THE SECRETARY OF COMMERCE,
Washington, D.C., June 29, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 26, 1961, requesting the views of the Department on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. S. 1969 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401 (d) (1) and (2) of the act, the new class to be known as "supplemental air carriers"; that such carriers may request, and be authorized to perform, limited services sup-

plemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized; that the Board be authorized to grant blanket authorizations without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. S. 1969 would also provide for grant of statutory operating rights to the existing holders of supplemental air carrier certificates, in the nature of "grandfather" rights.

On January 28, 1959, in the *Large Irregular Air Carrier Investigation,* CAB docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines, et al.* v. *Civil Aeronautics Board* (278 F.

2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

—36—

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed Civil Reserve Air Fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD do-

mestic wartime requirements, such as the Navy's "quick-trans" and the Air Force's "logair" operations, and for the needs of civil economy under the War Air Service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

Accordingly, the Department supports the proposed legislation.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, July 29, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 1969, 87th Congress, a

bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carrier, and for other purposes. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Federal Aviation Act of 1958 to provide for a class of supplemental air carriers, and for other purposes.

This proposed legislation has been brought about by virtue of a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *United Air Lines, et al.* v. *Civil Aeronautics Board* (278 F. 2d 446 (1960)). (See 364 U.S. 297, where petition for certiorari was granted.) In that case the court found that the Civil Aeronautics Board's prior actions in certificating supplemental air carrier operations were legally deficient in three

separate areas. The effect of the court's holding was that the Board did not possess the legal power to grant certificates of public convenience and necessity to authorize supplemental air transportation. Thus, those carriers who held certificates to engage in supplemental air transportation did not then have legal operating authority. As a stopgap measure Congress enacted Public Law 86-661, approved July 14, 1960, which measure was designed to preserve the supplemental air carrier industry for a period of 20 months, and until the matter could be studied more fully. The proposed legislation is designed to be of a permanent nature and, in effect, to replace the temporary stopgap legislation which allows the supplemental air carrier industry to operate for only 20 months from July 1960. In effect, the Board has found that supplemental air car-

riers have performed a useful public service and that they have a definite place and role in meeting the Nation's air transportation requirements. It, therefore, has proposed the subject legislation designed to amend the Federal Aviation Act of 1958, in various respects in order that it can legally award certificates for supplemental air transportation to those carriers who would be eligible for such authority under the proposed legislation.

The amendments proposed in S. 1969 to the Federal Aviation Act of 1958 are all amendments of a technical nature designed to give the Board appropriate legal authority to issue certificates to carriers for supplemental air transportation. These proposed technical amendments include a so-called grandfather provision which would authorize the issuance of a certificate for supplemental air transportation to those carriers who were previously authorized to engage in such transportation. (See line 7 and following on p. 3 of S. 1969.)

The continued existence of the irregular air carrier fleet is of real value in terms of national defense and it is evident that the future ability of the irregular air carriers to service the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In this regard, the current, April 1, 1961, allocation of aircraft to the civil reserve air fleet (CRAF) program shows that there are 8 supplemental air carriers participating in this program which now includes 22 air carriers.

The Department of the Air Force, on behalf of the Department of Defense, has no objection to the enactment of

S. 1969, but defers to the views of the Civil Aeronautics Board concerning the technical details of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,
Assistant Secretary of the Air Force.

—38—

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, June 9, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of May 26, 1961, acknowledged on May 31, requesting the comments of the General Accounting Office concerning S. 1969, 87th Congress, 1st session, entitled "A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes."

We have no special information or knowledge as to the need for or desirability of the proposed legislation and,

therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEDERAL AVIATION AGENCY,
Washington, D.C., July 11, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of May 26, 1961, for the views of this Agency with respect to S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

This bill, introduced at the request of the Civil Aeronautics Board, would provide permanent certification procedures for the supplemental air carrier industry. Under existing law (Public Law 86-661) the Civil Aeronautics Board has temporary authority, which will expire in March 1962, to permit supplemental air carriers to conduct operations. It is the view of the Civil Aeronautics Board that supplemental air carriers have performed a valuable service in meeting the needs of the national defense and that their future ability to serve the needs of the military depends upon their present and continued ability to operate their aircraft in commercial activities.

Senate Report No. 688

This measure is directed to operations within the particular province of the Civil Aeronautics Board, and, accordingly, this Agency defers to the views of the Civil Aeronautics Board on the subject proposal.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

N. E. HALABY, *Administrator.*

Conference Report, House Report No. 1950
87th Congress, 2d Session

SUPPLEMENTAL AIR CARRIERS

JUNE 28, 1962.—Ordered to be printed

Mr. HARRIS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1969]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1969) entitled "An Act to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and by inserting immediately after paragraph (31) the following new paragraphs:

* Numbers within dashes, used on the right, are the original page numbers of the document. These are the numbers referred to in Petitioners' Brief.

House Report No. 1950

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act."

SEC. *2. Subsection (d) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is amended by adding at the end thereof the following new paragraph:*

—2—

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

SEC. *3. Subsection (e) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)) is amended to read as follows:*

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the

public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board."

SEC. 4. *Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) is amended by adding at the end thereof the following new subsection:*

"ADDITIONAL POWERS AND DUTIES OF BOARD WITH RESPECT TO SUPPLEMENTAL AIR CARRIERS

"(n)(1) No certificate to engage in supplemental air transportation, and no special operating authorization described in section 417 of this title, shall be issued or remain in effect unless the applicant for such certificate or the supplemental air carrier, as the case may be, complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance, in the amount prescribed by the Board, conditioned to pay, within the

amount of such insurance, amounts for which such applicant or such supplemental air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the negligent operation or maintenance of aircraft under such certificate or such special operating authorization.

"(2) In order to protect travelers and shippers by aircraft operated by supplemental air carriers, the Board may require any supplemental air carrier to file a performance bond or equivalent security arrangement, in such amount and upon such terms as the Board shall prescribe, to be conditioned upon such supplemental air carrier's making appropriate compensation to such travelers and shippers, as prescribed by the Board; for failure on the part of such carrier to perform air transportation services in accordance with agreements therefor.

"(3) If any service authorized by a certificate to engage in supplemental air transportation is not performed to the minimum extent prescribed by the Board, it may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

"(4) The requirement that each applicant for a certificate to engage in supplemental air transportation must be found to be fit, willing, and able properly to perform the transportation covered by his application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board under this Act, shall be a continuing requirement applicable to each supplemental air carrier with respect to the transportation authorized by,

and currently furnished or proposed to be furnished under, such carrier's certificate. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate, in whole or in part, for failure of such carrier (A) to comply with the continuing requirement that such carrier be so fit, willing, and able, or (B) to file such reports as the Board may deem necessary to determine whether such carrier is so fit, willing, and able.

"(5) In any case in which the Board determines that the failure of a supplemental air carrier to comply with the provisions of paragraph (1), (3), or (4) of this subsection, or regulations or orders of the Board thereunder, requires, in the interest of the rights, welfare, or safety of the public, immediate suspension of such carrier's certificate, the Board shall suspend such certificate, in whole or in part, without notice or hearing, for not more than thirty days. The Board shall immediately enter upon a hearing to determine whether such certificate should be modified, suspended, or revoked and, pending the completion of such hearing, the Board may further suspend such certificate for additional periods aggregating not more than sixty days. If the Board determines that a carrier whose certificate is suspended under this paragraph comes into compliance with the provisions of paragraphs (1), (3), and (4) of this subsection, and regulations and orders of the Board thereunder, the

Board may immediately terminate the suspension of such certificate and any pending proceeding commenced under this paragraph, but nothing in this sentence shall preclude the Board from imposing on such carrier a civil penalty for any violation of such provisions, regulations, or orders.

"(6) The Board shall prescribe such regulations and issue such orders as may be necessary to carry out the provisions of this subsection."

SEC. *5. Clause (3) of section 406(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1376(b)) is amended by inserting after "each such air carrier" the words "(other than a supplemental air carrier)".*

SEC. *6. Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:*

"SPECIAL OPERATING AUTHORIZATIONS

"AUTHORITY OF BOARD TO ISSUE

"SEC. *417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—*

"(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.

"TERMS OF AUTHORIZATION

"(b) A special operating authorization issued under this section—

"(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and

"(3) shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

"PROCEDURE

"(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved."

—5—

SEC. 7. *(a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958*

for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States under a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744 of November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that, during the period beginning on the date such certificate was issued or such interim operating authority was conferred by the Board and ending on the date of enactment of this Act, such applicant or his predecessor in interest lawfully performed (A) a substantial portion of the transportation authorized by such certificate or interim operating authority, (B) substantial operations in overseas or foreign air transportation, as a supplemental or large irregular air carrier, authorized by the Board, or (C) substantial operations for the Military Establishment of the United States authorized by the Board;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the

enactment of this Act: Provided, That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect on or before the date of enactment of this Act, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred to the applicant with Board approval pursuant to section 401(h) of the Federal Aviation Act of 1958: Provided, That a person who on the date of enactment of this Act had on file with the Board an application for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, may be issued a new interim certificate or new interim operating authority under this section if the Board approves the transfer pursuant to section 401(h) of the Federal Aviation Act of 1958;

the Board may issue a new interim certificate or new interim authority to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958, subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 if it determines that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

House Report No. 1950

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show

that it or its predecessor has received interim operating authority from the Civil Aeronautics Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat., 527), the Board may issue new interim authority to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958, subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 if it determines that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

(c) If an applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation shall show—

(1) that it, or its predecessor in interest, was a carrier authorized to furnish all-cargo service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order numbered E-3085, adopted July 29, 1949, order numbered E-9760, adopted November 21, 1955, or order numbered E-10084, adopted March 12, 1956;

(2) that within thirty days prior to such application there has become final an order of the Civil Aeronautics Board in the domestic cargo-mail service case, docket numbered 10,067 and others, denying applicant's, or its predecessor's, application for renewal of such certificate; and

(3) that immediately prior to the effective date of such denial the applicant, or its predecessor in interest, lawfully performed either (A) any portion of the service authorized by the certificate or (B) any operations for the Military Establishment of the United States authorized by the Board;

the Board may issue a new interim certificate to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958, subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958, if it determines that the applicant is fit, willing and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

(d) A new interim certificate or new interim authority issued under this section shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

SEC. *8. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service*

between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the operating authority described in this subsection has not been revoked or otherwise terminated by the Board, it may perform operations as described in such certificate or such interim operating authority, subject to the terms, conditions, and limitations applicable to such certificate or such interim operating authority, or both, as the case may be, for thirty days from the date of enactment of this Act, and if it has filed application pursuant

to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, may perform such operations, subject to such terms, conditions, and limitations, for a period of ninety days from the date of enactment of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, and whose operating authority described in this subsection has not been revoked or otherwise terminated by the Board, may continue to operate in interstate air transportation as described in such operating authority, subject to the terms, conditions, and limitations applicable to such operat-

ing authority, for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, may perform such operations, subject to such terms, conditions, and limitations, for a period of ninety days from the date of enactment of this Act.

(b) The certificates of public convenience and necessity issued by the Board pursuant to Order E-13436 adopted January 28, 1959, and Order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption authority issued by the Board under Order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under Order E-10161 of April 3, 1956, shall terminate thirty days from the date of enactment of this Act.

(c) From and after the thirtieth day after the date of enactment of this Act the provisions of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)) shall not be applicable to any operating authority referred to in this section, or to any application for renewal thereof.

SEC. *9. The Civil Aeronautics Board may, if it finds such authorization to be in the public interest to permit an orderly transition to an all-charter operation, authorize the holder of any certificate or other operating authority issued by the Board under this Act or under section 401(d)(3) of the Federal Aviation Act of 1958 to perform individually ticketed and individually waybilled services in air transportation during the two-year period beginning on the date of enactment of this Act, subject to such terms, conditions,*

and limitations as the Board may prescribe, except that the annual gross revenue of such holder from services authorized by this section during each year of such two-year period shall not exceed the average annual gross revenue from individually ticketed and individually waybilled services furnished by such holder, as authorized by the Board, during the period beginning January 1, 1959, and ending December 31, 1961, inclusive, as determined by the Board.

SEC. *10. The provisions of this Act shall in no way affect the authority of the Board—*

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, or against the holder of any interim operating authority conferred by the Board under paragraph (2) of the first section of

Public Law 86-661 or under Board Order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or interim operating authority referred to in paragraph (1) of this section with respect to any violation of—

(A) the Federal Aviation Act of 1958,

(B) the provisions of such certificate,

(C) the terms of such operating authority, or

(D) the regulations of the Board,

without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of the holder of any certificate or interim operating authority referred to in paragraph (1) of this section for any violation referred to in paragraph (2) of this section, which violation occurred prior to the issuance to such holder of a new interim certificate or new interim authority under section 7 of this Act or the issuance to such holder of a certificate of public convenience and necessity to engage in supplemental air transportation under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958, may be imposed on the certificate or other operating authority issued to such holder under section 7 of this Act or under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958.

SEC. *11. Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 and others, shall be deemed to have been finally disposed of upon the date of enactment of this Act.*

SEC. *12. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended to read as follows:*

"SAFETY, ECONOMIC, AND POSTAL OFFENSES

"SEC. *901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed*

$1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

"(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of titles IV or VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or by the

Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged."

SEC. 13. Section 902(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(a)) is amended to read as follows:

"GENERAL

"SEC. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI,

VII, and XII), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise provided in this section or in section 904, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense."

SEC. *14. (a) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "Sec. 401. Certificate of public convenience and necessity," is amended by adding at the end thereof the following:*

"(n). Additional powers and duties of Board with respect to supplemental air carriers."

*(b) That portion of such table of contents which appears under the heading "*TITLE IV—AIR CARRIER ECONOMIC REGULATION*" is amended by adding at the end thereof the following:*

"Sec. 417. Special operating authorizations.
"(a) Authority of Board to issue.
"(b) Terms of authorization.
"(c) Procedure."

(c) That portion of such table of contents which appears under the heading "Sec. 901. Civil penalties." is amended by striking out "(a) Safety and postal offenses." and in-

serting in lieu thereof "(a) Safety, economic, and postal offenses.".

And the Senate agree to the same.

OREN HARRIS,
JOHN BELL WILLIAMS,
HARLEY O. STAGGERS,
SAMUEL N. FREIDEL,
JOHN JARMAN,
JOHN B. BENNETT,
W. L. SPRINGER,
HAROLD R. COLLIER,
SAMUEL L. DEVINE,
Managers on the Part of the House.

WARREN G. MAGNUSON,
MIKE MONRONEY,
GEO. A. SMATHERS,
STROM THURMOND,
CLAIR ENGLE,
NORRIS COTTON,
THRUSTON MORTON,
HUGH SCOTT,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1969) entitled "An Act to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes," submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text. The Senate agreed to the amendment of the House with an amendment which was a substitute for both the text of the House amendment and the Senate bill, and the House disagreed to the Senate amendment.

The committee of conference recommends that the House recede from its disagreement to the amendment of the Senate, with an amendment which is a substitute for the text of the Senate amendment, the text of the House amendment, and the text of the Senate bill.

The differences between the House amendment to the text of the Senate bill and the substitute agreed to in conference are noted below, except for clerical corrections, incidental changes made necessary by reason of agreements reached by the conferees, and minor drafting and clarifying changes.

Requirements as to insurance, performance bonds, minimum service, and fitness.—Sections 3 and 4 of the Senate amendment contained provisions not contained in the House

amendment, relating to liability insurance and performance bonds, minimum service requirements, and minimum standards of financial fitness, applicable to supplemental air carriers. These provisions of the Senate amendment are described as follows:

1. The Civil Aeronautics Board was authorized to require supplemental air carriers to carry liability insurance or furnish performance bonds, or both, in the minimum amounts and upon the minimum terms prescribed by the Board, or demonstrate arrangements equivalent thereto.

2. The Board was authorized to prescribe minimum service requirements for supplemental air carriers. If any such carrier failed to perform authorized air transportation services to the minimum extent so prescribed, the Board was authorized to suspend such carrier's certificate to the extent of such service and, after notice and hearing, the Board was further authorized to direct that such certificate cease to be effective to the extent of such service.

3. The Board was authorized to prescribe minimum standards of financial fitness for supplemental air carriers and to require such carriers to submit reports so the Board could ascertain whether such carriers were maintaining continuous compliance with such standards. If any such carrier failed to comply with such standards or to

file such reports, the Board was required to suspend such carrier's certificate and, if such carrier did not demonstrate compliance with such standards within a reasonable period of time, the Board could, after notice and hearing, revoke such carrier's certificate.

House Report No. 1950

Section 4 of the substitute agreed to in conference retains provisions relating to insurance and performance bonds, minimum service requirements, and standards of fitness, applicable to supplemental air carriers, with some changes which the committee of conference agreed would impose stricter requirements on supplemental air carriers, particularly with respect to liability insurance, and would make such provisions administratively more workable. Such section 4 of the conference substitute would add a new section 401(n) to the Federal Aviation Act of 1958 containing paragraphs numbered (1) through (6), as follows:

1. Paragraph (1) would make it mandatory for the Civil Aeronautics Board to require each supplemental air carrier, and each applicant for a supplemental certificate, to comply with Board regulations governing the filing and approval of policies of insurance (in the amount prescribed by the Board) conditioned to pay amounts for which such carrier or such applicant may become liable for personal injuries or death, or for property damage or loss, resulting from negligent operation or maintenance of aircraft operated by such carrier or such applicant under authority granted by the Board. The Senate provision permitting the Board to accept "equivalent arrangements" in lieu of policies of liability insurance is omitted from the conference substitute.

2. Paragraph (2) would authorize the Board to require any supplemental air carrier to file a performance bond or equivalent security arrangement (in the amount and upon the terms prescribed by the Board) in order to protect persons utilizing the air transportation services per-

formed by such carrier against the failure of such carrier to perform such services in accordance with agreements therefor.

3. Paragraph (3) would provide that, if any service authorized by a supplemental certificate is not performed to the minimum extent required by the Board, the Board may (after notice and hearing) direct that such certificate shall cease to be effective to the extent of such service.

4. Paragraph (4) would deal with the problem of requiring each supplemental air carrier to maintain continuous compliance with fitness standards, including but not limited to standards of financial fitness, by declaring that the requirement that each applicant for a supplemental certificate must be found by the Board to be fit, willing, and able to perform the transportation covered by his application and to conform to the provisions of the Federal Aviation Act of 1958 and requirements of the Board thereunder, shall be a continuing requirement applicable to each supplemental air carrier, taking into consideration the transportation authorized by such carrier's certificate and the transportation currently furnished or proposed to be furnished under such certificate. The Board would be required to modify, suspend, or revoke such certificate (after notice and hearing) for failure of such carrier to maintain continuous compliance with the requirement that such carrier be so fit, willing, and able, or for failure of such carrier to file reports deemed necessary by the Board to determine whether such carrier is so fit, willing, and able. This provision would

make it clear that the Board's standards of fitness applicable to each supplemental air carrier could be revised from time to time, after the supplemental certificate is initially

issued, in order to provide standards commensurate with the transportation services performed thereunder.

5. Paragraph (5) would give the Board authority to suspend the certificate of any supplemental air carrier, without notice or hearing (for not more than 30 days), for failure of such carrier to comply with requirements relating to liability insurance, performance of minimum service, or fitness, whenever the Board determines that immediate suspension of such certificate is required in the interest of the rights, welfare, or safety of the public. After exercising such suspension authority, the Board would be required to begin a hearing immediately to determine whether such certificate should be modified, suspended, or revoked. The Board could extend the period of suspension to the extent necessary to complete such hearing, but in no event could the periods of extension aggregate more than 60 days. If the Board should determine that a carrier whose certificate is suspended under this provision comes into compliance with the requirements relating to liability insurance, performance of minimum service, and fitness, the Board could immediately terminate such suspension and any pending proceeding instituted under this provision. It is clearly provided, however, that the Board could impose a civil penalty of not more than $1,000 per day for each day of any violation of those requirements which led to such suspension, notwithstanding the fact that the carrier concerned subsequently came into compliance with such requirements and the Board terminated such suspension.

6. Paragraph (6) would require the Board to prescribe such regulations and issue such orders as may be necessary to carry out the foregoing provisions.

House Report No. 1950

Cargo carriers charter authority.—Existing section 401 (e) provides that "Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board." All certificated route carriers derive their authority to engage in off-route charter operations by virtue of this section. However, in 1953, the Court of Appeals for the District of Columbia interpreted this provision to mean that it merely lifted the limitation with respect to the points designated in the certificate and did not affect the type of service to be rendered. The Senate amended this provision so as to provide that any air carrier other than a supplemental air carrier, may make charter trips without regard to the type of service provided in its certificate of public convenience and necessity. This amendment was designed to empower the Board to authorize air carriers certificated to carry only cargo to engage in passenger charter operations under regulations prescribed by the Board.

Section 416 of the Federal Aviation Act of 1958 provides in effect that the Board may exempt an air carrier from any of the economic provisions of title IV of the act or any regulation issued thereunder, whenever the enforcement thereof would be an undue burden on the air carrier concerned by reason of the limited extent of, or unusual circumstances affecting, the operation of the carrier, and such enforcement would not be in the public interest. The Senate committee in its report (No. 664) took strong exception to the Board's excessive use of this exemption power and stated that "the Board's practice of routinely permitting continual large-scale charter operations by exemption is not only unwise, but illegal, because not within the 'un-

usual circumstances' contemplated by section 416." The committee of conference concurs with this view. The hearing records of both Houses are replete with evidence that the Board has exceeded the proper use of the exemption authority, not only with respect to the granting of charters but in other areas as well. For example, the Board employed the exemption power as a device to circumvent the statutory provisions with respect to air carrier certification when, in 1955, it granted supplemental air carriers authority to engage in air-carrier operations on an interim exemption basis. This order quite properly was set aside by the Court of Appeals, District of Columbia Circuit, July 19, 1956, on the ground that the Board had not made sufficient subsidiary finding to sustain the statutory finding required for exemption that the requirement for certification would be an undue burden on the carriers. A petition for a writ of certiorari was denied by the Supreme Court.

The Board has also employed this exemption power to permit cargo carriers to engage in passenger charter operations. The committee of conference recognizes that these carriers have performed a service for Military Air Transport Service and others and that such authority may be a desirable supplement to their primary role of conducting cargo operations. It is not the intention of the committee of conference to preclude cargo carriers from engaging in passenger charter operations by virtue of its report language directed to section 416. The committee of conference, however, does feel that the Board's exemption power under section 416 should be construed narrowly and employed in only very limited and unusual circumstances. Use of the exemption authority to permit cargo carriers to engage in

passenger charter operations does not, in the view of the committee of conference, fall within the purview of the Board's exemption power.

If the Board is disposed to granting cargo carriers authority to engage in passenger charter operations the committee of conference is of the view that it should do so only by virtue of specific statutory authority rather than through a strained interpretation of its exemption powers. Consequently, the committee of conference agrees that section 401(e) should be amended as contemplated by the Senate amendment. In so doing, the committee of conference wishes to state that it does not intend that this amendment be interpreted as a directive that the Board should necessarily grant the cargo carriers either any greater or lesser authority than the Board has, in practice, given them under section 416. The scope of such authority is a matter for the Board to determine. The intention is only to insist that the Board act under specific statutory authority and not under a strained interpretation of a provision not contemplated by Congress. This amendment will permit the Board to authorize cargo carriers to engage in passenger charter operations to the extent that it may find, from time to time, that the public interest so requires. Since any charter operations conducted under section 401(e) can be done only under regulations prescribed by the Board, the Board will have the necessary flexibility to limit frequency of service and to impose such other limitations, conditions, and restrictions as the public interest may require.

—14—

Individually ticketed and waybilled services.—Under the House amendment, the term "supplemental air transportation" did not include individually ticketed and waybilled

services, therefore supplemental air carriers could not have engaged in such services on a permanent basis. Under the Senate amendment, such term did include individually ticketed and waybilled services and therefore such carriers could have engaged in such services on a permanent basis.

The substitute agreed to in conference adopts the provisions of the House amendment with respect to the prohibition of individually ticketed and waybilled services on a permanent basis. However, in order to permit an orderly transition to all-charter operations, section 9 of the conference substitute authorizes the Civil Aeronautics Board to permit any supplemental air carrier holding interim operating authority issued by the Board under this legislation or permanent operating authority issued by the Board under the proposed section 401(d)(3) of the Federal Aviation Act of 1958 to perform individually ticketed and waybilled services temporarily during the 2-year period beginning on the date of enactment of this legislation and subject to such terms, conditions, and limitations as the Board may prescribe. Such section 9 also contains a specific limitation that the annual gross revenue of such carrier from such services shall not exceed the average annual gross revenue from such services furnished by such carrier during the calendar years 1959, 1960, and 1961. At the end of such 2-year period supplemental air transportation would be limited to all-charter operations, except for limited individually ticketed service which may be authorized by the Board on a temporary basis.

Transportation of mail.—The House amendment prohibited a supplemental air carrier from transporting mail except pursuant to a special operating authorization issued

by the Board for a temporary period, and during this temporary period a supplemental air carrier could transport mail.

Under the Senate amendment a supplemental air carrier could carry mail at any time but in no event could that carrier be eligible for a so-called subsidy payment for transporting mail.

The proposed conference substitute adopts both the prohibition of the House amendment against transporting mail except pursuant to a special operating authorization and the prohibition of the Senate amendment that a supplemental air carrier cannot become eligible for a subsidy payment.

New interim operating authority.—Under section 5 of the House amendment, the Civil Aeronautics Board was required to issue new interim operating authority to each applicant who met the eligibility requirements for such authority. Such applicant could then continue to engage in supplemental air transportation to the same extent authorized in the certificate or other authority of such applicant previously issued by the Board, subject to the same terms, conditions, and limitations applicable to such previously issued authority, until the Board granted or denied the application of such applicant for a supplemental certificate authorized to be issued under this legislation.

Under subsections (a) and (b) of section 7 of the Senate amendment, the Board was authorized to issue this new interim operating authority to each applicant who met the eligibility requirements therefor, but only if the Board found the applicant to be fit, willing, and able to perform the transportation services authorized by such authority

and to conform to the provisions of the Federal Aviation Act of 1958 and the rules, regulations, and requirements of the Board and the Administrator of the Federal Aviation Agency. The operations performed under such authority was to be subject to such terms, conditions, and limitations as the Board prescribed.

The substitute agreed to in conference adopts the provisions of the Senate amendment regarding the issuance of new interim operating authority with one modification. The conference substitute provides, in effect, that no operations may be performed under any new interim operating authority unless such operations could be authorized by the Board in a supplemental certificate issued pursuant to the new section 401(d)(3) proposed to be added to the Federal Aviation Act of 1958 by section 2 of the conference substitute. The effect of this modification is to limit operations under any new interim operating authority to supplemental air transportation, as defined by this legislation, which includes only charter operations, except to the extent the Civil Aeronautics Board is authorized by this legislation to permit limited individually ticketed operations on a temporary basis.

Subsection (c) of section 7 of the Senate amendment contained a provision not contained in the House amendment under which the Civil Aeronautics Board was authorized to grant new interim operating authority to an applicant who was previously certificated by the Board to furnish all-cargo service between points within the United States, if such carrier applied for such authority within 30 days after the application for renewal of its cargo certificate was denied by the Board. The committee of conference is

informed that this provision describes an air carrier which was originally certificated as a supplemental air carrier and subsequently certificated as a cargo carrier. Under Board regulations such carrier could not hold two types of certificates; therefore, the supplemental certificate initially issued was canceled. This provision of the Senate amendment would permit such carrier to apply to the Board, within 30 days after the application for renewal of its cargo certificate is denied, for new interim operating authority to conduct supplemental operations pending the issuance or denial of a supplemental certificate pursuant to the proposed new section 401(d)(3) of the Federal Aviation Act of 1958.

This provision of the Senate amendment is retained in the conference substitute.

Statutory operating authority.—Section 6 of the House amendment provided that any air carrier holding certain operating authority previously issued by the Civil Aeronautics Board to engage in supplemental air transportation could continue operations under such previously issued authority for a period of 30 days after the date of enactment of the proposed legislation and, if such carrier applied for a supplemental certificate under the proposed new section 401(d)(3) of the Federal Aviation Act of 1958 within such 30-day period, it could further continue such operations until the Board granted or denied such carrier's application for new interim operating authority.

Section 8 of the Senate amendment contained provisions similar to section 6 of the House amendment, except that any such carrier which applied for a supplemental certificate within 30 days after the date of enactment of the

proposed legislation could continue its operations (as described in the operating authority previously issued by the Board) for a period of only 90 days after such date of

enactment. The operating authority previously issued by the Board would be terminated 30 days after such date of enactment. If the Board did not grant such carrier's application for new interim operating authority, or for a supplemental certificate, within 90 days after such date of enactment, such carrier could no longer engage in supplemental air transportation.

The substitute agreed to in conference adopts the provisions of the Senate amendment with respect to statutory operating authority, with the addition of language to make it clear that any carrier continuing operations under this provision would be required to perform such operations subject to the same terms, conditions, and limitations applicable to the operating authority of such carrier previously issued by the Board.

Subsection (c) of section 8 of the Senate amendment provided that, 30 days after the date of enactment of the proposed legislation, section 9(b) of the Administrative Procedure Act would not be applicable to any operating authority referred to in such section 8, so as to preclude any carrier from continuing operations pending Board action on an application for renewal of such operating authority. No corresponding provision was contained in the House amendment.

The substitute agreed to in conference adopts this provision of the Senate amendment.

Subsection (c) of section 6 of the House amendment contained a provision, not contained in the Senate amend-

ment, which provided that any air carrier whose operating authority was continuing solely by virtue of a judicial stay of a Board Order terminating such operating authority could continue its operations until the judicial stay of such Board Order was lifted or the judicial review of such Board Order was completed, whichever first occurred. This provision is no longer necessary because the judicial review proceeding referred to has been completed since the House amendment was adopted on September 18, 1961, and the Board Order referred to has terminated such operating authority so that the carriers concerned are no longer operating thereunder.

This provision is omitted from the conference substitute.

Civil penalties.—Section 9 of the House amendment amended section 901(a) of the Federal Aviation Act of 1958 so as to enable the Civil Aeronautics Board to impose a civil penalty of not more than $1,000 for each violation of the economic provisions of such act and of the regulations and orders of the Board issued thereunder. Also included in the House amendment was a provision (similar to the provision applicable in the case of criminal penalties) that, if any economic violation was a continuing one, each day of such violation would constitute a separate offense. This section of the House amendment was not limited to violations committed by supplemental air carriers, but included violations by certificated route air carriers or any other person.

Section 11 of the Senate amendment contained provisions identical to those of the House amendment, with an important modification which broadened the provision of the House amendment relating to continuing offenses so as to include not only violations of the economic provisions of

the Federal Aviation Act of 1958 administered by the Civil Aeronautics Board, but also violations of the safety provisions of such act administered by the Federal Aviation Agency.

—17—

The substitute agreed to in conference adopts the provisions of section 11 of the Senate amendment.

Criminal penalties.—Section 10 of the House amendment amended section 902(a) of the Federal Aviation Act of 1958 so as to preserve the criminal penalties contained in such section for knowing and willful violations of the economic provisions of such act.

Section 12 of the Senate amendment contained provisions identical to those of the House amendment, except that language was added by the Senate amendment to make it clear that criminal penalties would not be applicable to violations of regulations issued by the Postmaster General in connection with the transportation of mail, or to violations of laws relating to foreign commerce for which criminal penalties are otherwise provided in section 904 of the Federal Aviation Act of 1958.

The substitute agreed to in conference adopts the provisions of section 12 of the Senate amendment.

OREN HARRIS,
JOHN BELL WILLIAMS,
HARLEY O. STAGGERS,
SAMUEL N. FRIEDEL,
JOHN JARMAN,
JOHN B. BENNETT,
W. L. SPRINGER,
HAROLD R. COLLIER,
SAMUEL L. DEVINE,
Managers on the Part of the House.

Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce on Limited Air Carrier Certificates, House of Representatives, 87th Congress, 1st Session

STATEMENT OF CHAIRMAN BOYD

p. 10

* * * * *

"The Board therefore, on April 28, 1960, submitted to this Committee proposed legislation to correct the deficiencies in the Board's legal authority which were found to exist by the court."

p. 13:

"MR. BOYD. * * *

"The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the supplemental air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In order to assure the continuance of the supplemental air carrier industry, the Board recommends the enactment of H.R. 7318."

p. 29:

"MR. BOYD. * * *

"We still do not know exactly where these supplementals should fit.

"We feel very strongly that the supplemental carriers have a definite place and I think we have put on record our support of supplemental carriers, but we are seeking $50,000 to study the role of the supplemental carrier.

"We feel that 7318 here would give us the flexibility to deal with this problem once we find out exactly where we should go and one of the things we have to figure out is to what extent can we go in the international charter field without doing injury to our certificated route carriers."

p. 74:

STATEMENT OF CLAYTON L. BURWELL

* * * * *

"The prime reason these carriers have been forced to spend more than 9 years before the Board in a proceeding for certification and have been forced to take up the Congress time is the concern that if they are granted any authority, it will result in widescale diversion of revenues from the route carriers who also have their troubles. I believe it will surprise you to learn that the maximum domestic trunkline revenues even exposed to diversion by supplementals is less than three-fourths of 1 percent,[5] and that this is basically the magnitude of the problem.

"The 12 domestic trunklines derived only one-half of 1 percent of their total transport revenues from charter operations in 1959 and 1960.[6]

"The total transport revenues of these 12 carriers from domestic operations in 1960 was slightly less

than $2 billion and their charter revenues $10,414,000 or approximately one-half of 1 percent. From the table (exhibit No. 4) you can see that approximately the same percentage obtained in 1959.

"'This, therefore, is the maximum area of competition in the field of domestic charter—even if we diverted it all. It is difficult to believe that a $2 billion a year industry of 12 carriers can be hurt by this one-half of 1 percent exposure or that the myth of competition in the airline industry can survive on no exposure at all.'"

---

p. 91:

EXHIBIT No. 8

CIVIL AERONAUTICS BOARD, ECONOMIC REGULATIONS,
EFFECTIVE APRIL 28, 1961

[Reg. ER-326]

PART 295—TRANSATLANTIC CHARTER TRIPS

Revision of Part

* * * * *

Historically, a major objective of the Board has been the development of the potentially large mass international travel market in the United States without undue diversion from the regularly-scheduled, individually-ticketed services of United States and foreign flag route operators. In furtherance of this objective, the Board has granted individual authorizations for transatlantic charter flights to carriers not otherwise thereunto authorized, but has also imposed and from time to time has redefined standards for

charter eligibility of groups. Thus, in 1957, we amplified the general criteria for charter eligibility which we had followed in 1955 and 1956. These criteria were largely those that had been previously developed by the carriers and the Board, and had been embodied in IATA Resolution 045, which contains the requirements established by scheduled international route operators for their own operations. In 1958, we made these criteria more specific and susceptible of precise application. And in 1959, we embodied them with minor modifications in an Economic Regulation (Part 295), given them greater stability and legal effect than theretofore. In 1959, we also concluded the Foreign Off-Route Charter Investigation, Docket 7173, in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation. In addition to amending their permits to provide this authority, we promulgated a new Economic Regulation (Part 212) and established as guides for issuance of a charter authorization standards similar to those in Part 295. In 1960, after the IATA carriers had finally undertaken, upon the Board's suggestion, to provide more definitive and enforceable standards for their own operations, we undertook to modify Parts 295 and 212 in order to conform our requirements in substantial respects to those now provided in amended IATA Resolution 045.[1] Consequently, at such time charter requirements for all classes of transatlantic carriers had become substantially similar.

p. 156:

"MR. PATTERSON. • • •

• • • • •

"On the charter business, particularly overseas, our big complaint is with the Civil Aeronautics Board and the restrictions they place upon us. A group of people, a group of Americans or a group of Polish-Americans, or Israel-Americans, should be able to go out and charter an airplane to go to their homelands for a month or 2 weeks vacation in the summertime. Our Government is spending millions of dollars around the world trying to obtain friends. What could be more helpful than taking a bunch of Polish-Americans or Israel-Americans to their homeland to spread the word for a month. But you can't do this. There is too much redtape. There is a carrier sitting here in the room that took a bunch of people last year to a foreign country, and in the postflight report that the Board makes you file there was one passenger missing coming back. This was a terrible thing. Well, the poor man had such a good time in his homeland he died. He had a heart attack and died, but the Board criticized it because they didn't know what happened to him. They thought it was a phony deal. This is how bad it really is. If the Congress would help us get the Board regulations relaxed to the point where we could carry more people over there and not only over there—our company had a group of 47 ministers turned down last week from Brussels coming over here. We had an empty airplane ferrying back from a group we had taken to Paris. We tried to get an exception to carry back 47 ministers that could only afford to come back with us. They couldn't afford a scheduled airline fare or the foreign carrier fare. We were turned down

because we could not adjust our tariff to meet this demand. If it had been a full airplane load of ministers, it would have been all right. But 47 did not fit the tariff and we could not carry these people back. Consequently, they are not coming over here.

"On the charter deal, we had a group at New York University about 2 weeks ago. A little 17-year-old campus girl was organizing this group. The Civil Aeronautics Board continually hammered away at us for days and days and days, and at the dean of the university, to try to get the group bona fide. In the meanwhile, another boy on the campus organized a 2-D Club, he called it, got people off the streets from two other universities that we know about, and it was approved on KLM with no problem at all. Our group was finally approved and did go, but it was an awful battle. The foreign carriers are siphoning off an awful lot of the North Atlantic business. The testimony this morning brought out an interesting point. I believe they should be entitled to some of the business. I don't want to discriminate against them. But I think that the Board should be equally as rigid on the foreign carriers as they are on us.

"That is all I have to say, sir."

pp. 218-219:

ALL-CHARTER AUTHORITY AFFORDS A SUITABLE AND PRACTICAL BASIS FOR SUPPLEMENTAL CARRIER OPERATIONS

Certificates solely for charter operations would be consistent with the regulatory approach of the act, and would

rest on sound principles. Such certificates would embody regulation based on what service is to be provided, where, and by whom, instead of trying to permit certain carriers to engage in a little scheduled air transportation, but not very much. And it is clear that contract and charter services have provided a fertile and growing field for the certificated supplemental carriers—a field which, indeed, constitutes the bulk of their operations.

The latest revenue data for the supplementals, published by the Board, are for the year ended June 30, 1960. These data are based on the supplementals' official financial reports to the Board. Comparison of the fiscal 1960 data with those for prior fiscal years shows that, since the Board by its 1955 decision enlarged the scope of supplemental charter operations, the supplementals have expanded rapidly in the charter field. The rate of increase, for the 25 certificated supplementals, is indicated in the table below:

Year ended June 30—	Contract and charter revenues	Percent increase	
		Over prior year	Over fiscal 1956
	(Thousands)		
1956	$21,910	—	—
1957	24,036	9.7	9.7
1958	27,788	15.6	26.8
1959	39,696	42.9	81.2
1960	47,111	18.7	115.0

During this same 5-year period, while the charter and contract revenues of the 25 certificated supplementals more than doubled, the operating revenues of the domestic trunklines increased by only about 12 percent per year. It is thus abundantly clear that the charter field which the Board opened to the supplementals in 1955 gave them a very real opportunity for business growth.

These same revenue data, as reported by the supplementals and published by the Board, also reveal that charter and contract services have generated the bulk of the revenues of most of the 25 certificated supplementals. Individually ticketed passengers and individually waybilled freight services are of lesser importance. Thus, for the 2-year period ended June 30, 1960, Transocean and U.S. Overseas—only two of the certificated supplementals—accounted for almost 85 percent of the individually sold revenues of the entire group of 25 carriers. For the remaining 23 carriers, charter and contract accounted for 94 percent of total transport revenues, and individually sold services accounted for only 6 percent.

The eagerness with which some supplemental carrier spokesmen seek access to noncharter markets should not be permitted to obscure the facts as to their growth and success in charter markets.

It should be noted that the Board's two hearing examiners, in their initial decision which led to the Board's 1955 decision, originally found that the authority granted these carriers should be basically only to conduct charter operations, and should not include authority to conduct individually ticketed services of a route-type nature. Two mem-

bers of the Board advocated the all-charter approach, but were outvoted by the three members who felt that a limited individually ticketed authority should also be granted. Thus, of the seven men who devoted their talents and expertness to deciding the scope of the authorization, four rejected the notion that the 10-flight grant for individually ticketed flights would serve the public interest and accord with the sound regulatory concepts of the act, while only three favored a limitation-of-schedules approach.

Available data—such as those cited above—would seem to indicate that the four were right, and the three were wrong. This is particularly so since the three based their decision on the notion that the "health and prosperity" of the certificated carriers "permitted" expansion of supplemental carrier operations. Whatever may have seemed to be the "health and prosperity" of the scheduled airlines in 1955, in no year since could any such basis have been asserted for expanding supplemental operations.

The Board has not, in any public pronouncements since 1955, reaffirmed its 1955 decision on the basis of reevaluation in the light of developments since 1955. It has, at each stage, merely said this was decided then, and so should be done. Indeed, the current Board is in the paradoxical position of asking the Congress to amend the act so it can certificate the supplementals for the scope of operations deemed sound in 1955—or for an undefined greater scope of operations—while at the same time it asks the Congress for an appropriation to hire outside consultants to make a "study" and tell it what the proper role of the supplementals should be. The Board has requested a $50,000 ap-

propriation for this purpose. Part of the justification for this request, in the Board's testimony before the Subcommittee on Independent Offices, House Committee on Appropriations, on March 27 of this year, was "We have to have some detailed thinking based on studies of what should be the role of the supplemental air carriers in the future * * *. I do not think any of us can give you any answer today on what we think it should be."

The situation is accordingly this: The "health and prosperity" basis of the 1955 decision is exploded. The Board has not reexamined that decision. The Board appears uncertain that its prior decision was right.

Under all the circumstances, we submit that this is no time for the Congress to enlarge the operating authority of the supplemental air carriers. Nor is it a time for the Congress to empower the Board to enlarge the supplementals' operating authority, in an undefined manner, at an indefinite future time, under a scheme which involves basically unsound regulatory principles. The most that the Congress should do, at this time, would be to amend the act so as to make clear that the Board could issue certificates for all-charter operations.

Such congressional action would not foreclose the Board from completing its studies—either through outside consultants or through its own staff—and then proceeding as an up-to-date evaluation of the problem might indicate. Meanwhile, the supplementals would be enabled to conduct all-charter operations, on a sensible and practical basis, consistent with the regulatory precepts of the act.

Hearings Before the Aviation Subcommittee of the Committee on Commerce on Supplemental Air Carriers, Senate, 87th Congress, 1st Session

STATEMENT OF CHAIRMAN BOYD

p. 5:

* * * * *

"The Board therefore, on April 28, 1960, submitted to this Committee proposed legislation to correct the deficiencies in the Board's legal authority which were found to exist by the court."

* * * * *

p. 111:

* * * * *

MR. BURWELL. * * *

"There is an area where the travel agent is important because he does organize and generate this travel and traditionally people go to him, but the protection against taking ordinary individual ticketed passengers is that everybody in the airplane is going on an all-expense tour, so, again, it seems to me that it is well worth a look of the committee in the promotion of tourism and so on to take a look at the all-expense tour method of travel.

"SENATOR MONRONEY. Would that be on a charter basis, in your estimation?

"MR. BURWELL. I don't think it is technically—well, it is not a charter basis under the present Board rules. Under the definition that we would like to get it would be."

* * * * *

p. 268:

"SENATOR MONRONEY. I don't quite agree, because I think you have to supply the people who are willing to go and come according to the terms of the charter.

"MR. STRATTON. This is if you have written round trip into it again.

"SENATOR MONRONEY. Even going one way, leaving at the same hour and the same day. You have a choice of 10 schedules going out on a certificated airline. You can go down and get on a plane in the morning or the afternoon or evening, but you would have to leave at a time certain with a group certain to go on a certain route. By definition, it occupies a very great distinction from your normal ticketed traffic.

"MR. STRATTON. What we are trying to get at, you see, is preservation of a distinction so that it does not open the door to simply the selling of individual tickets to members of the general public—

"SENATOR MONRONEY. This committee is with you on that. We recognize the value of protecting that, but I still think you can arrive at so many restrictions, the homogeneity, or whatever it is called, all these things, that they are merely a device in which you can cut charter down to a mere trickle for people that it actually was designed to serve.

"MR. STRATTON. Quite conceivably you could be so restrictive as to do that. You can also be so loose as to completely upset the ticketed route structure that you are trying to preserve and this is where the problem has come in, through the years, and the Board's

attempts to define charter I would kind of like to review.

"For example, one of the problems that arose was during the year 1950. The Board had a very loose definition in the lines of what we were just talking about, permitting ticket agents or other intermediaries to form the groups from general public and to charter the airplanes. The Board abandoned that policy in 1951 as a result of their experience with the 1950 results, which wound up in the latter part of that year, particularly, with a great many passengers being stranded in Europe, and with a great many delays in college boys and other people getting home, part of which was because their contract was with an intermediary, the man that put the group together. He allegedly had a contract with the carrier, but the charter group was having a little difficulty trying to find out who was responsible. They had no direct contract with the carrier. This led, as I say, to the Board's abandoning that approach in the North Atlantic after its rather unsatisfactory experience in 1950."

pp. 269-271:

* * * * *

"SENATOR MONRONEY. And they have a whole lot of other gimmicks. I ran into one where social workers were recruited from leading colleges in the country and were seeking charter service to go to England and work in the social agencies of England. They have a very good international exchange of people.

"These were students. They ran into one of these nice little roadblocks that the IATA regulations have,

that the kids did not know that they were going to be passing their work, whether they would have to go to summer school to make up things, so they could not belong 6 months before the time of departure.

"Consequently, you run into this complicated, idiotic interpretation. They had to be individually ticketed, although they were in a group certainly within the meaning of what any definite organization is. They were going to live together, work together, do social work together, and were carefully recruited by the leading colleges to engage in this. Yet because they could not commit themselves 6 months ahead, since most of them were selected only 3 months ahead, they go over by individual ticketed fare, which is a great deal higher, and then it is Okay to charter them coming back, the same group.

"They were no more homogeneous on their return than they were on their departure, I hope, and this bit of idiocy that we get into on the interpretation that I think is making Congress rather impatient with what appears to be not an effort to encourage the legitimate charter but to prohibit by all possible redtape the proper use of it.

"MR. STRATTON. Don't misunderstand me, Senator, as I said a moment ago, IATA has a difficult problem trying to write a definition that gives an adequate scope of charter without permitting it simply to be turned into a thing that can be used to break your ticketed route and fare structure.

"The Board has been at this for some time, and I am not holding a brief for any particular thing that is now

in the regulation. But this regulation, the transatlantic charter policy has been amended, I believe, almost every year since it was first promulgated in 1955. It has been a constant revision process in the light of experience to attempt to deal with problems that have been discovered as they arise, both in the sense of closing loopholes, if necessary, and in the sense of eliminating restrictions that turn out to be unnecessary or for one reason or another impractical or unworkable.

"The Board now has instituted a transatlantic passenger charter investigation, one of the things as I understand it, as I believe Chairman Boyd said, is a fresh look at those rules.

"Now, part of my point there is that because of the complexity of the problems that are involved, this is an area in which I believe there has to be a certain amount of flexibility for the administrative agency to promulgate regulations and to change them from time to time. You have a great deal of risk, if you attempt to adopt one definition to last forever, covering all of the various phases of the problem, that you discover you just did it wrong.

"SENATOR MONRONEY. 207 has worked well, you say, in the domestic side?

"MR. STRATTON. 207 has worked well.

"SENATOR MONRONEY. Why would not it work well on international?

"MR. STRATTON. Basically that is the international rule. The problem that they ran into, as I understand

it, when they got to transatlantic charters, was largely in this area of what is solicitation from the general public? This has not been an acute problem domestically. It might be sometime."

---

p. 281:

STATEMENT OF PURPOSE AND NEED FOR PROPOSED LEGISLATION PREPARED BY CIVIL AERONAUTICS BOARD

(A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes)

The Board, on January 28, 1959, in the "Large Irregular Air Carrier Investigation," Docket 5132, issued temporary certificates of public convenience and necessity for supplemental air service to a number of air carriers found by the Board to be fit to receive them. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services. This authorization was limited to interstate air transportation. It was the latest step in the development of this industry which was originally known as large irregular air carriers.

A number of air carriers certificated to render route-type service petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the Board's order and opinion of January 28, 1959. On April 7, 1960, the

court rendered its decision in *United Air Lines et al. v. Civil Aeronautics Board* (278 F. 2d 446), in which it found that the Board's action in certificating supplemental air carrier operations was legally deficient in three respects:

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules * * *."

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

As a stopgap measure to avoid immediate cessation of the supplemental air carrier industry, the Congress enacted

Public Law 86-661, approved July 14, 1960. Under this legislation the Board is given temporary authority to permit supplemental air carriers to conduct operations for 20 months. However, legislation of a more permanent nature is needed if there is to be any assurance that the supplemental air carrier industry is to continue in existence.

The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the irregular air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the irregular air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military.

The Board recommends changes in the law as follows:

1. The law should be made clear that a carrier may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers, and the Board should be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized.

2. The Board should be authorized to grant a blanket authorization without having to designate specific points.

3. The present stringent requirement of fitness should be reduced so that only general findings of fitness need be made for supplemental service.

4. Statutory operating rights should be granted to the existing holders of supplemental air carrier certificates in the nature of a "grandfather" provision, thus assuring the continuity of operations presently being conducted by the supplemental air carriers.

The draft bill attached has been prepared to carry out these recommendations.

---

p. 282:

THE SECRETARY OF COMMERCE
Washington, D.C., June 29, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 26, 1961, requesting the views of the Department on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

S. 1969 would amend the Federal Aviation Act so as to provide for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized;

that the Board be authorized to grant blanket authorizations without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. S. 1969 would also provide for grant of statutory operating rights to the existing holders of supplemental air carrier certificates, in the nature of "grandfather" rights.

On January 28, 1959, in the Large Irregular Air Carrier Investigation, CAB Docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines et al.* v. *Civil Aeronautics Board* (278 F. 2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not

based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed Civil Reserve Air Fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD domestic wartime requirements, such as the Navy's Quicktrans and the Air Force's Logair operations, and for the needs of civil economy under the war air service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, p. 283:

we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

Accordingly, the Department supports the proposed legislation.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

CONGRESSIONAL RECORD

A. House of Representatives

Vol. 107, p. 20081:

"MR. HARRIS. * * * This legislation will keep the supplemental air carrier industry in business * * * We feel the substitute bill more adequately establishes a program that will give true supplemental airline service. Still it provides restrictions that will protect regular airline service and the general public * * *."

Vol. 108, pp. 12322-12323:

"MR. WALTER. First, I want to commend the gentleman and his colleagues on the conference on the fine work which they did in maintaining the basic position of the House. I am glad that the future role of the supplementals will be confined to the charter field. However, I have a question about the charter definition.

"As I recall the Senate bill, it included language that would have changed the longstanding concept of the meaning of 'charter' in the airline field.

"MR. WILLIAMS. That is quite true.

"MR. WALTER. It proposed that all-expense travel agents could charter airplanes in their own name and then sell space to the public for all-expense tours. This would have changed completely the function of the travel agent and put him in position to engage in rate cutting.

"Can the gentleman tell us what happened to that provision?

"MR. WILLIAMS. The Senate receded and accepted the position of the House on that provision. So, there is no statutory definition of 'charter' in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board. The all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in our position on that, also.

"MR. HARRIS. Mr. Speaker, will the gentleman yield?

"THE SPEAKER pro tempore. The time of the gentleman from Mississippi has again expired.

"MR. HARRIS. Mr. Speaker, I yield the gentleman an additional 3 minutes.

"Mr. Speaker, will the gentleman yield?

"MR. WILLIAMS. Yes, I yield to the gentleman from Arkansas.

"MR. HARRIS. The gentleman is correct. The Senate proposed to change the well established meaning of 'charter.' The House objected to changing it. Therefore, the bill reported by the conferees contains no definition of charter because the Senate receded. The language the gentleman was concerned about is not in the bill.

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own

account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the "all-expense tour" language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter.

"If I may I would like to read a statement I have prepared on this point:

"The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the

bill, as passed by the House, contained no definition of charter.

"The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter, of "a group on an all-expense paid tour." The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy.

"MR. WALTER. I thank the gentleman for his assurances that there has been no change in the meaning of a charter. This is a very important point. Certainly, all the efforts to bring to an end the many problems in the supplemental airlines which stemmed from their individually ticketed authority would be of no avail if they were allowed to engage in split-charters, all-expense tours or other devices for destroying the meaning of charter and engaging in a type of individually ticketed authority, under some guise or other. I am glad the position of the Congress on this is crystal-clear."

Vol. 108, p. 12324:

"MR. COLLIER. Mr. Speaker, the bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the

entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services.

"Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus, the bill, as passed by the House, contained no definition of charter.

"The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter, of "a group on an all-expense-paid tour." The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy."

Congressional Record

B. Senate

Vol. 107, pp. 17163-17164:

"MR. SCHOEPPEL. • • •

"Mr. President, the pending bill is a comprehensive one which will establish a permanent and constructive role in aviation for the supplemental airlines. It represents a tremendous amount of effort on the part of the Aviation Subcommittee which is so ably headed by the Senator from Oklahoma [MR. MONRONEY]."

• • • • •

"• • • The Cotton amendment requires the Civil Aeronautics Board to impose limitations on the individually ticketed operations of the supplemental air carriers to assure that their flights will not significantly divert traffic from the regular airlines which form the backbone of our air transportation system.

"This protection for the regular airlines is essential in my view and in the view of the Senator from New Hampshire [MR. COTTON] for these are the air carriers which fly on the lean days as well as on the rush days. They serve the smaller cities as well as the big ones, and they can only provide that service if they have reasonable protection against operators who can pick and choose, operators who can fly the high profit coast-to-coast runs and ignore the cities in between. • • •

• • • • •

"Let me make one other point. This is not a bill which makes everybody happy. Neither the regular airline carriers nor the supplemental airlines are completely happy with it. I am sure that each of these

groups would like a number of things changed. But I believe the bill represents an honest, fair, and forthright effort to resolve the difference on the basis of the public interest."

* * * * *

Vol. 107, p. 17162:

"MR. MONRONEY. Mr. President, this is a very complicated and difficult piece of legislation * * * It seeks to provide a permanent place in the aviation industry for supplemental air carriers without adverse effect upon scheduled carriers * * *"

Vol. 108, p. 12283:

"MR. MONRONEY. * * *

"The charter definition contained in the Senate version of the bill was omitted from the bill agreed to by the conferees. This was done unilaterally by the Senate conferees because of the decision which had been made on individually ticketed authority. The charter definition would have operated to prohibit the granting of split charters—that is, the transportation of more than one charter group in a single aircraft. We felt that the Board should be left free to determine on its merits the desirability of permitting the supplemental carriers to conduct such charters, in view of the fact that the charter business will ultimately represent the only source of revenue for these carriers. Another reason why we desired to leave the Board sufficient flexibility so that it might permit split charters was the

effort of the Defense Department to encourage these carriers to acquire modern turbine-powered equipment for the civil reserve air fleet. The size of such aircraft makes it virtually impossible to find a charter group sufficiently large to fill an entire aircraft."

Vol. 108, pp. 12284-12285:

"MR. COTTON. • • •

"I do wish to comment briefly on one aspect of the conference committee's action. The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board.

"The elimination from the bill of the general Senate language defining charter service should not, however, in my view, be construed as giving the Board any kind of carte blanche with respect to long-established principles of law relating to charters. The Civil Aeronautics Board has, in the past, rejected proposals to water down the safeguards against the abuse of charter service, and I hope the Board will continue to be firm in this respect. The Board has a serious obligation to see that charter services do not become individually ticketed services through subterfuge or abuse."

"MR. SCOTT. • • •

"While the bill thus contemplates only charter services by the supplementals, it does not define "charter."

It does not need to do so. The act has, since 1938, authorized charter trips by scheduled airlines without regard to the points named in their certificates under Board regulations. The meaning of charter in air transportation has become well established law, and it would have been superfluous to write it into the present bill.

"A charter, in air transportation, means that a single person or organization has contracted for the entire capacity of the aircraft for a given trip or a given time. This is entirely distinct from the situation where a person or group of persons buy tickets for some seats on the airplane, and other persons or groups buy tickets for other seats on the airplane. There could, for example, be no such thing as a "charter" for half, or some other fraction, of the airplane, with the remainder of the seats on the plane being sold to individually ticketed passengers, or ostensibly "chartered" to additional persons or groups.

"Another essential element is that the person who charters an airplane cannot resell the space to individuals or solicit the general public to buy space. This is necessary to prevent breakdown of the regulatory system, and most particularly the rate regulatory system. If this were not one of the rules, a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares the airplane must observe as to each passenger.

"The Senate bill proposed to modify the established concept of charter by permitting charters to "a group

on an all-expense-paid tour." Such a group could have been assembled from the general public. This would have meant that travel agents could have chartered aircraft, and then sold the space to ordinary passengers traveling on all-expense tours.

"The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation. This being the thrust of the congressional action, it would be clearly improper if the Civil Aeronautics Board were hereafter to undertake to rewrite the law and to authorize, under guise of charter, all-expense-tour operations, or split charters for less than the entire capacity of the airplane.

"I mention the latter point because I understand there have been proposals, from time to time, that the Board should by administrative fiat do to the definition of "charter" what the Congress has refused to do. The record, in my view, is clear that the Board has no such latitude.

"MR. THURMOND. Mr. President, I should like to emphasize the great importance of maintaining the concept of charter which has historically prevailed in the CAB economic regulations. This concept is that a charter consists of a full planeload comprised of a single homogeneous charter party.

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision.

"Therefore, I want to emphasize that the CAB must continue its historic charter definition. Any erosion of this concept would defeat the purpose of this supplemental legislation, and would undermine the congressional intent that the supplementals, after the 2-year phasing out period, shall not conduct any individually ticketed business, but, rather, shall concentrate exclusively on full planeload charters.

"Air transportation has suffered from the abuses of individually ticketed operations. The law violations in this area have all too frequently extended to infractions of safety provisions as well. It is for this reason that I want to emphasize the insistence of Congress that supplemental operations shall be confined to full planeload charter operations exclusively."

Public Law 86-661
74 Stat. 527

AN ACT

To provide that the Civil Aeronautics Board may temporarily authorize certain air carriers to engage in supplemental air transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Civil Aeronautics Board (hereafter in this Act referred to as the "Board") is empowered—

(1) to validate for a period not to exceed twenty months from the date of enactment of this Act, without further proceedings, any temporary certificate of public convenience and necessity for supplemental air transportation issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, which certificate has not been revoked or otherwise terminated by the Board on or before the date of enactment of this Act; and

(2) to confer interim operating authority to engage in supplemental air transportation for a period not to exceed twenty months from the date of enactment of this Act upon any person or air carrier which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, or (B) has an application for a certificate as a supplemental air carrier pending before the Board on the date of enactment of this Act.

SEC. 2. (a) Nothing in this Act shall be construed to affect the authority of the Board—

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, or against the holder of any operating authority conferred under Board Order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or operating authority referred to in paragraph (1) of this subsection with respect to any violation of (A) the provisions of the Federal Aviation Act of 1958, (B) the provisions of such certificate, (C) the terms of such operating authority, or (D) the regulations of the Board, without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of an air carrier for any violation referred to in paragraph (2) of this subsection which occurred before the validation of a certificate of public convenience and necessity for, or before the conferring of any operating authority for, supplemental air transportation under this Act, may be imposed on the operating authority of such air carrier granted under paragraphs (1) or (2) of the first section of this Act.

(b) The authority granted to the Board under this Act shall not affect any other authority of the Board to license air carriers to engage in supplemental air transportation.

(c) Any certificate validated, and any operating authority conferred, by the Board under this Act shall extend to service between the State of Hawaii and the other States of the United States to the extent that such service was authorized pursuant to Board Order E-9744 of November 15, 1955. For the purposes of any such certificate or operating authority, the State of Hawaii shall be considered one point.

Approved July 14, 1960.